Ombudsman

Fairness for all in British Columbia

1987 Annual Report

To the Legislative Assembly

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April, 1988

The Honourable John Reynolds
Speaker of the Legislative Assembly
Parliament Buildings
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Dear Mr. Speaker:

It is my pleasure to present the 1987 Report to the Legislative Assembly in accordance with Section 30(1) of the Ombudsman Act. This Annual Report covers the period January 1 to December 31, 1987.

As an officer of the Legislative Assembly, I would be pleased to appear and report further on these matters, at the request of the Members.

Yours sincerely,

Stephen Owen

Stephen Owen
Ombudsman

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Highlights of the 1987 Annual Report

- Individual members of the public brought 12,712 concerns to the Ombudsman's office in 1987.
- The Ombudsman's office concluded 3,571 full investigations in 1987, of which:
  - 62.5 per cent were resolved to the satisfaction of the complainant.
  - 37.3 per cent were found to be not substantiated.
  - 0.2 per cent were complaints substantiated by the facts of the investigation but which remained otherwise unresolved.
- The Ombudsman's office completed seven major systems studies covering important issues of administration fairness including:
  - criminal record screens, (page 11)
  - liquor control and licensing, (page 11)
  - the workers' compensation system, (page 12 and page 78)
  - the impact of B.C. Transit's Skytrain in Lower Mainland communities, (page 12 and page 70)
  - the regulation of pesticide application permits, (page 13 and page 35)
  - restrictions on issuing medical practitioner billing numbers, (page 13 and page 41) and
  - B.C. Hydro's collection practices. (page 12 and page 66)

  These were all released as Public Reports in 1987 or early 1988. Significant changes in administrative policy are resulting from these studies.
- In August, 1987, the provincial Cabinet accepted the Ombudsman's recommendations in the Eddy Haymour case, bringing to a close a tragic case dating back to the early 1970s. Wrongful acts by government officials frustrated this man's attempts to develop Rattlesnake Island in Okanagan Lake and drastically changed the course of his life. As a result of the Ombudsman's report, Haymour received $140,000 from the provincial government, his ex-wife received $10,000, his legal expenses were paid and the provincial government apologized publicly for the harm done to him. (page 17)
- The government provided legislative authority under the Supply Act to make ex gratia payments in keeping with a recommendation made by the Ombudsman in last year's annual report. This will make it possible to resolve unfairness where a monitary award is appropriate but no potential legal liability exists to permit payment under the Crown Proceeding Act. (page 17)
- In October 1987, a Deputy Ombudsman was appointed with special responsibilities for children and youth issues. About 600 cases each year involve children, relating to youth detention, child protection, health, education and community services. The Deputy Ombudsman will coordinate investigations involving children and develop outreach programs.
- During 1987, four organizations - the Union of B.C. Municipalities, the B.C. Association of Social Workers, the Vancouver Elementary School Administrators' Association and the convention of the Social Credit Party - called by resolution upon the provincial government to proclaim the remaining unproclaimed sections of the Ombudsman Act schedule. As well as investigating complaints against ministries, boards, commissions and corporations of the provincial Crown, authority to investigate local government, educational and health facilities and the statutory professions is also written into the Act but was left unproclaimed. The Ombudsman suggested in last year's annual report that they be proclaimed but the provincial government has not yet done so. (page 16)
- The Ministry of Environment and Parks changed one of its hiring policies after suggestion by the Ombudsman that it was unfair. The Public Service Labour Relations Act excludes from union membership and fringe benefits those employees who are hired for less than 60 days. The Ministry of Environment and Parks additionally had a policy of not hiring such temporary employees for a second term until at least six months had passed. (page 36)
- A Workers' Compensation pension award to a worker with silicosis was backdated after the Ombudsman suggested a review of the X-ray reports on which the origins of his condition were based. As a result, he was awarded $41,695 in retroactive payment. (page 79)
- As the result of the Ombudsman's investigation of a complaint regarding the Workers' Compensation Board procedure for applying penalty assessments against employers, the Board amended the information it sends to employers regarding appeal time-limits and methods of calculating penalties. (page 79)
- A young family found out that government employees will go an extra mile to help. The couple was stranded without money late on a Friday afternoon and had a young baby to feed over the week-

end. The baby was given a hospital check-up and the family given a food-voucher by a Social Services Ministry worker after working hours Friday evening to see them through the weekend. (page 53)

- An inmate who remained at a remand centre for a time after being sentenced was not informed of his failure to earn remission while at the remand centre. Because he did not have information about it, he could not exercise his right to appeal the decision. As a result of an Ombudsman investigation, the inmate was awarded the 10 days remission. (page 29)
- As a result of a complaint from a person applying for Medical Services Plan coverage, the Ombudsman's office clarified with MSP officials that there was no legal authorization to require a person's Social Insurance Number. (page 42)
- Mental health institutions throughout the province instituted a new Ministry of Health policy in 1987 dealing with access to patient file information, both by the patient and other agencies, as a result of an earlier investigation of a complaint to the Ombudsman's office. (page 45)
- A doctor had been denied a practitioner billing number, even though another doctor applying under similar circumstances had received one. After an investigation by an Ombudsman officer, the previously denied practitioner number was issued. (page 46)
- The Motor Vehicle Department changed its policy as a result of an Ombudsman investigation so that women, whether married or divorced, may revert to the use of their maiden name on their drivers' licences. (page 63)

Part I
Introduction

Quality Assurance in the Administration of Public Services

A. Overview

The issue of quality assurance in the administration of public services is both of fundamental importance and a daunting challenge to modern democratic society. Quality measures the fairness and effectiveness of public service delivery to individual members of society.

This part of the annual report examines the quality of public service delivery from the perspective of the mandate and experience of the Ombudsman's office. It expands on last year's consideration of the constraints on the traditional means of holding the modern administrative state accountable for quality; it explains the Ombudsman's responsibility for quality assurance in the administrative systems of government and reviews the results of the office's systems approach to this over the past year; it considers the private delivery of public services and the implications for quality; and it sets out the office's major ongoing issues and initiatives.

The unanimous decision of the B.C. legislature in 1977 to create the Ombudsman's office to watch over the administrative practices of the public bureaucracy was not taken because we have a bad system. On the contrary, it is a profound expression of the health of our democracy that it can adapt through new mechanisms to preserve fairness to individuals in the face of the complexity and diversity of modern life. Individual fairness is the essence of our democratic system and the effective holding of government to account for the quality of the administration of public services is essential to achieving it. The purpose of the Ombudsman's office is to assist government to meet this duty of fairness to individual members of society.

B. Monitoring Fairness in Public Administration

That democratic government must treat individuals fairly is both trite to say and challenging to accomplish in a complex society. Laws and government action must achieve public policy objectives for the general good of society and these can sometimes cause unfairness in individual situations. The resulting bitterness can tarnish our democratic ideal, leading to political polarization, cynicism towards our public institutions, and destructive litigation between individual and state. To counter these, we must develop administrative practices and mechanisms to promote the fair application of public policy to individual situations and to resolve conflict in a non-adversarial way when it arises.

In our partisan system of government, there is a natural tension between democracy, which demands the devolution of power, and politics, which pursues the concentration of power. The system is kept in equalibrium by our traditions of fairness and the systems that support it. However, it is necessary to adapt our thinking and practices to preserve this balance in the face of the modern realities of the administrative state and polarized party politics. Concepts such as the separation of powers among the legislative, executive and judicial branches of government, ministerial responsibility, and the state as subject to general law must not be presumed blindly to endure for our benefit.

Partisan politics can effectively subordinate the legislative branch of government to the executive during a majority mandate. Public policy, public accounts and public administration are simply not sub-

ject to the constant scrutiny of the legislature that is contemplated by our parliamentary theory.

We generally hold government to account through elections. However, the effectiveness of this control mechanism relies heavily on the notion of ministerial responsibility for the administrative furtherance of government policy by the numerous ministries and other public institutions. While such responsibility can be effectively exercised and monitored for broad public policy objectives, the size and complexity of the modern administrative state have made it unrealistic to expect a minister to take personal responsibility for the individual acts of unfairness or impropriety of all of the officials who report to him or her. If this political responsibility has been weakened or severed, how then are we to monitor and resolve individual unfairness?

The judicial branch of government is often an impractical instrument for enforcing individual rights against the state. Cost, delays, immunities, privileges, privitive clauses and judicial deference limit effective review. But litigation will almost always be the least appropriate way to resolve distributional disputes between individuals and the state for more fundamental reasons. The democratic state will never simply be another party to litigation; it is a positive force with responsibility to harmonize and order society. These will not be achieved in an adversarial or coercive way, even if judicial review is effective in a given case. Apart from defending the public against frivolous claims and contesting constitutional issues, it is unseemly for government to have to be sued by its citizens. Rather, more constructive resolutions must be found which reconcile all apparently conflicting interests.

The slow erosion of these traditional notions weakens the accountability of modern government for individual unfairness. Resolving this dilemma requires that we address the reality of the extent to which the administration of public affairs has become dominated by the public bureaucracy. Administrative law, which regulates the relationship between individual and state and affects almost every aspect of our lives, is not exercised totally in parliament, the cabinet room and the courts or tribunals. Rather, it is to a substantial extent applied across the desks of public servants as they exercise the discretion necessary to translate public policy into individual situations.

Achieving individual fairness therefore depends largely on quality assurance in the administrative decisions, actions and practices of the government bureaucracy. In this context, fairness involves more than legal authority. Laws may accomplish a general purpose or define a specific goal; fairness requires justice in an individual situation. Unfairness includes improper discrimination, arbitrary or oppressive behaviour, arrogance, delay and unreasonableness by public officials, which nevertheless may be impractical, inappropriate or impossible to challenge at law. This is the scope of review of administrative action which is set out in the *Ombudsman Act*, which creates an agency to assist the public bureaucracy in quality assurance.

Quality assurance in any organization cannot be efficiently exercised by reviewing or inspecting every individual situation. Attitudes, policies and practices must be established which ingrain the notion of quality so that the right decision or action is taken as a matter of course. The Ombudsman's office cannot hope to receive, investigate and resolve all of the real or perceived incidents of unfairness arising within the provincial public service on an individual basis. Therefore, if it is to meet its broad mandate, it must assist the public service to promote a first-time quality approach to its responsibilities through the application of systems which are based in individual fairness.

C. Systems Solutions to Unfairness

Over the past year, the Ombudsman's office in B.C has analyzed its role in the development of administrative policy and practice. It has introduced a systems approach as a supplement to the Ombudsman's more traditional role of reacting to individual complaints. This shift in emphasis is from the critical to the constructive.

Individual fairness is the end to which western democratic society aspires; accountability is the means by which it achieves it. However, the dominance of the modern public sector strains the ability of traditional control systems to hold public bureaucracy effectively to account. The political process is not sufficiently fine-tuned to monitor all individual concerns; the judicial system is expensive, slow and often impotent to review administrative action; the media are not always reliable investigators of individual unfairness; and local control over public services can be frustrated by centralist tendencies of senior government.

Unfairness in public administration is not the result of ill-will or incompetence. Generally, the opposite qualities are demonstrated by our public servants. However, bureaucratic insensitivity and error can be caused by the overwhelming responsibility assumed by modern government and the size of the institutional machinery required to discharge it.

The role of an Ombudsman is to stimulate the public administration to become more sensitive to individual fairness, and thereby to become more democratic. However, the success of an Ombudsman's office may be inversely related to its size. If it hopes

to sensitize large public bureaucracies to individual concerns, it must exercise a distinctly human perspective; this requires agility and concentration which are more difficult to maintain within a large organization.

However, as an Ombudsman's office demonstrates its effectiveness, the demands on its resources will encourage either growth, which risks mediocrity, or stridency, which invites confrontation. Simply adding more staff to investigate more complaints is a bureaucratic and perilous solution; subtlety is far more potent than volume in public discourse. The challenge is to amplify the impact of the office while holding its focus and composure, and this requires the willingness to adapt. In suggesting a systems approach to Ombudsmanship, an alternative to physical growth and confrontation is presented as a response to the growing challenge.

Introducing a systems approach requires a threshold maturity for an Ombudsman's office. It is not an alternative to individual complaint resolution; rather it is intimately dependent on the technical expertise and case work experience acquired through investigating, analysing and resolving thousands of individual concerns over many years. This daily exposure must continue as the lifeblood of effective oversight and direction. However, as the skill and experience accumulate within an Ombudsman's office, there evolves both a capacity and a responsibility to identify and remedy systemic causes of recurring unfairness.

Care must be taken to distinguish administrative policy from legislative policy. Developing legislation is a political task which typically involves debating the relative merits of differing social and economic policies. In this, an Ombudsman has no business. Only if legislation offends established principles of fairness in some absolute way does an Ombudsman have a responsibility to enter the debate.

Administrative policy development is very different. It involves the translation and application of broad legislative policy to individual situations; it describes method and not purpose; and it requires the exercise of discretion by public servants which creates the potential for arbitrariness. These are fundamentally the business of an Ombudsman.

Fair public administration is not merely the application of goodwill to particular situations. It requires a comprehensive body of administrative policy which includes:

- ☐ Clear foundational links of all policy and practice to legislation and regulations so that the lawful authority is apparent to all.
- ☐ Principled codes of service which emphasize the fundamental responsibility of public servants as being to ensure fairness to individual members of the public.
- ☐ Structured criteria against which discretion is exercised to ensure that similar situations are treated consistently and different situations are treated individually.
- ☐ Publication of all policy, practices and decision-making criteria in plain language to assist administrators to act consistently and the public to measure administrative performance confidently.
- ☐ The opportunity for meaningful public participation in administrative decision-making to ensure that all relevant information is taken into account and to instill public confidence in the fairness, openness and effectiveness of government action.
- ☐ Reasons to be given for adverse administrative decisions, whether required by law or not, so that performance can be measured accurately and openly against policy.
- ☐ Internal review procedures which promote quality assurance and responsiveness to public concern.
- ☐ An external, independent review process which ensures procedural and substantive fairness for decisions which affect individuals' fundamental rights of life, liberty, livelihood, shelter, health, sustenance or security.

The Ombudsman's office is qualified to advise on such policies and practices and should not shy away from playing an active and constructive role in their development.

There is a risk that if an Ombudsman's office invests too much in the development of an administrative policy, it may be inhibited from the objective and rigorous review of its application. While this demands caution, it does not require abstinence. It is not sufficient reason to remain merely reactive and critical after unfairness has occurred. Administrative policy exists, even if it is not practised under a reasoned and articulated discipline. An Ombudsman's office is regularly involved in recommending change in individual situations and, where implemented and repeated generally, later reviewing the fairness of its own recommendations. Administrative practices must regularly adapt to meet new circumstances, experience and insights and an Ombudsman's office may evade its duty if it remains unwilling to voice its opinion in a timely way.

The statutory authority for the systems approach is contained in Sections 10(1), 22(2) and 30(2) of the B.C. *Ombudsman Act*. Section 10(1) provides for the investigation by the Ombudsman with respect to a matter of administration "on his own initiative" of "procedures" which "may aggrieve" a person. Section 22(2) relates the findings of unfairness to a recommendation that "a practice, procedure or course of conduct be altered". Section 30(2) authorizes the Ombudsman to comment publicly in the public interest on matters "relating generally to the exercise of his duties under this Act". These sections mandate

investigation and reporting which is general and preventive, and these are the major elements of the systems approach.

The role of an Ombudsman's office is not to replace or oppose government decision-making. Rather, the office exists to assist the public service to be more aware of and responsive to the public's individual concerns. In addition to helping resolve individual complaints, an Ombudsman's office can, over time, serve as a resource to government institutions in identifying recurring unfairness which may not display an obvious pattern to the agency itself, and can advise it on how to avoid it in the future.

It is often incorrectly assumed that administrative fairness can only be achieved at the cost of displaced efficiency to the authority. Disproving this requires creativity and clear thinking, but it is a major opportunity and responsibility for an Ombudsman's office. The task often involves reconciling apparently conflicting objectives by demonstrating their mutual dependence; fairness is not only compatible with effectiveness, but can be shown to be a necessary precondition.

As stated above, administrative fairness is also a matter of quality control for an authority, because it requires making the right decision. The major lesson learned by industry in the past decade is that a quality approach which promotes doing things right the first time pays enormous dividends through enhanced goodwill and reduced costs. This must be equally compelling for government bureaucracies, whose sole justification is public service. An Ombudsman's office can play a valuable resource role as an external consultant on matters of quality control.

An important opportunity for an Ombudsman's office to apply systems solutions arises in issues involving more than one authority. It may be able to play a useful coordinating role where individual fairness requires a reconciliation amongst institutional interests or mandates of various ministries, where budgetary restraint has encouraged the transference of responsibility among ministries, or where a resolution requires an inter-ministerial response.

A systems approach may be effective in assisting public servants to understand and exercise their full responsibility by facilitating communication and demonstrating the inter-relationship among the mandates of all ministries and public institutions involved. The public will only be genuinely served if it has confidence that all public servants are vigilant of its best interests, even regarding issues that may be outside of a formal job description. A public servant may not have the duty or right to operate outside his or her own specific role; however, if information which is contrary to the public interest comes to his or her attention, the public should be able to expect that it will be acted on by having the appropriate officials alerted. "It's not my department" is an inadequate response for a public servant.

In Canada, public servants have the same rights as other members of the public to complain to a provincial Ombudsman. It may be that because of internal influence and access to information, they are less vulnerable to administrative unfairness than others. However, they can also be exposed to direct and indirect threats to their employment. In handling such a complaint, an Ombudsman's office must either preserve anonymity or protect against reprisals of any kind.

Most concerns affecting public servants are most appropriately resolved through internal grievance procedures. However, there are sensitive fairness issues which may be inappropriate for the normal collective bargaining and arbitration processes which an Ombudsman's office can help to resolve through a systems approach. These include fundamental rights which should not be put on the bargaining table with less basic terms of employment, such as employee privacy rights; concerns with administrative policy for which there is perceived to be no internal channel of communication and which are thereby causing institutional dysfunction; and issues involving apparently competing employee or institutional rights where neither management nor labour can fully represent the various interests, such as the respective rights of AIDS sufferers and co-workers.

Public service management can draw on systems initiatives by the Ombudsman's office in a number of ways. First, as discussed above, it can seek advice on lowering costs and raising its public image through providing high quality services which are both fair and effective. Second, it can use an Ombudsman's recommendation for necessary change to support additional resources from the intra-ministerial or Treasury Board budgeting process. Third, it can publicly defend its legitimate practices in a more credible way through the independent review and endorsement of the Ombudsman's office. Fourth, it can present line staff with the Ombudsman's recommendations on fair treatment of the public outside of the complex and sensitive labour relations context.

It is important to keep in mind that the objective of a systems study, as with an individual investigation, is to achieve a fair result. It is not to embarrass the authority or aggrandize the Ombudsman's office. An Ombudsman's considerable powers of investigation and exposure can put the office in possession of very sensitive material, particularly after a major audit. The purpose and value of publication must be carefully assessed against the primary purpose of effecting positive change. There will be situations when the greatest benefit to the public can be achieved by first reporting privately to the authority and then reporting jointly with the authority to the public on the plans for dealing with the identified problems.

As a general note on systems studies, it can be helpful, as well as fair, to receive the authority's comments on a draft report before it is finalized and published. If errors, misinterpretations or oversights are identified, their correction will contribute to a better product; and if the authority misunderstands and reacts negatively to certain passages, these can be reworded to avoid unnecessary emotion or bad feeling.

The above discussion considers the major elements of a systems approach. While many of these will be reflected periodically in the practices of most Ombudsman's offices, an attempt has been made to introduce them as a regular and coherent feature of the Ombudsman's office's operations over the past year in British Columbia.

The Ombudsman's office is currently receiving more individual complaints than at any time in its eight year history. While the systems approaches described above are straining the resources of the office to the limit, they should logically contribute to a permanent solution to many of the recurring complaints received regarding administrative unfairness. The intention, over time, is to address in this way the problems experienced with all of the major institutions with which the office is involved.

A fundamental aspect of the systems approach is a belief that public institutions, despite their size and complex responsibilities, are able and willing to respond to individuals in a fair way, on their own initiative. While individual problems will always occur and can be resolved on a case by case basis through an Ombudsman's office, the vast majority of potential complaints should simply never arise in institutions which are systematically sensitive to their overriding duty to ensure individual fairness, and to quality in their administrative actions, decisions and practices.

D. Theory into Practice

During 1987, the Ombudsman's office initiated a series of systems studies covering important administrative issues which have resulted in public reports. The indication to date is that the process and resulting recommendations for change have been generally well-received by government, the public service and the public. These studies are summarized in detail under the appropriate jurisdictional sections of this report. Some of the major administrative fairness issues are noted below.

Criminal Record Screens

The Ombudsman's public report on criminal record check practices by numerous ministries aimed at screening out inappropriate people from working in positions of trust with vulnerable individuals was published in April 1987. It reconciles the apparently conflicting privacy interests of employees and the paramount interest of the protection of children by setting out guidelines for practices of which the effectiveness is enhanced by the fairness. It describes an administrative approach that provides the intended protection for vulnerable individuals in a way which does not deter competent, suitable people from applying for these jobs or place undue reliance on only one step of what should be a comprehensive screening process. The report also demonstrates the ability of the Ombudsman's office to play a constructive role in administrative policy development where different institutional public and private interests are involved.

The report has gone through two printings and continues to be in great demand by private and public sector employers, employees and other interested parties. The major recommendations include:

- ☐ That criminal record information released to public and private sector employers by all police forces be standardized.
- ☐ That the same criminal record information be released to employer and employee for an opportunity to correct or explain it.
- ☐ That no criminal record information be released that cannot be verified by reference to a specific document, report or witness.
- ☐ That employers provide the employee with a guarantee that the information will be kept confidential.
- ☐ That employers supply reasons in writing for adverse decisions to employees or applicants, stating the provisions for an appeal.
- ☐ That designations of positions of trust based on contact with vulerable people be consistently defined.
- ☐ Guidelines for determining the relevance of the criminal record information to the position of trust.

Liquor Control and Licensing

At the request of the Minister of Labour & Consumer Services, the Ombudsman's office prepared a systems report on fairness issues arising in the administration of provincial liquor control and licensing policy. Published in June 1987, the report deals specifically with the need for clear policy direction to public servants exercising discretion; the delicate responsibility of structuring without fettering discretion; and the essential elements of a fair and independent appeal of administrative decisions.

The report demonstrates the distinctions between

Ombudsman involvement in the development of legislative policy and administrative policy; the impact of the office when it has the top level confidence of the ministry; and the application of the office's specific expertise in administrative fairness to a particular field of government regulation. Many of the report's recommendations are being incorporated into the ministry's new administrative policy.

Workers' Compensation System

The Ombudsman's systems study into workers' compensation was published in July 1987. It is based on the experience of the office in investigating thousands of complaints over the years. It addresses two major fairness issues.

The first is the effectiveness of the claims and appeals systems in reaching correct and acceptable decisions within a reasonable period of time. Recommendations concerning the quality of first level decisions, disclosure of information, communication, and access to competent advice, representation and resources for all parties to a claim address this issue.

The second major issue deals with accountability. Fairness in a democracy requires the opportunity for individuals to hold public bureaucracies to account. The political process can safeguard the general policy objectives of our society, in workers compensation and elsewhere. However, it is less effective in dealing with cases of individual unfairness. Entrusting individual rights to a non-reviewable, technical bureaucracy, however expert and well-meaning, risks replacing accountability with paternalism and challenges democratic values. Recommendations concerning an appeal system which is truly independent, expert and final address this issue.

The report identifies the need for regular and open review of all public institutions, and particularly those which affect our fundamental interests of life, health, safety and livelihood. A major objective of the report is to identify changes in the system which will increase the quality and acceptance of workers' compensation decisions and significantly reduce the need for Ombudsman review.

The study concludes with a recommendation that the Minister of Labour and Consumer Services convene at the earliest possible date a conference of representatives of all interested parties to review the system of workers' compensation in B.C. The key benefits of such action would be that the minister receive advice on workers' compensation policy issues on an ongoing basis from parties that are expert and representative. Since publishing the report, the Ombudsman's office has recommended to the minister that this action should take the form of a standing advisory council appointed by and reporting to the minister. It is anticipated that this recommendation will be followed in the near future.

The WCB has an extremely complex mandate which requires a delicate balancing of employer and worker interests. Through the system, employers gain, in effect, low-cost liability insurance against worker tort claims; and workers gain no-fault compensation for work-related injuries and diseases and access to specialized services. If either interested party perceives the system to be unfairly out of balance, it will be eventually challenged through the judicial and political processes, to the potential disadvantage of both parties and the public. Increasingly, MLA's are being called on to take action to adjust the statutory framework of the system, and the courts are being involved in reviewing WCB policy and its application in individual cases. If the system is to be maintained, it will have to be adapted to maintain the confidence of all. An advisory council which reports to the provincial government on policy matters, and an appeal system which deals finally with individual cases independent of the WCB, would together help to maintain the integrity of the system.

B.C. Hydro Collections Policy

B.C. Hydro faces an immense challenge from its often-competing roles as a public utility entrusted with a monopoly over an essential service and as a commercially viable enterprise. This analysis identifies the causes of both recurring unfairness and frustrated collection attempts and makes recommendations designed to solve both.

The study demonstrates many of the features of the systems approach which can stimulate broad and enduring change. It is in response to a definite problem trend; it is initiated at the invitation of the public institution with the support of senior management; it involves the institution in its planning and implementation; it combines the expertise of the Ombudsman's staff in administrative fairness with the field expertise of the authority; and it assumes and works towards the fact that individual fairness and broad policy objectives can be complementary.

A joint public report published in February 1988 set out the Ombudsman's findings and recommendations and Hydro's implementation plans.

Skytrain Report

The Ombudsman's Skytrain Report, published in November, 1987, deals with the impact of Skytrain on adjacent residential neighbourhoods in Vancouver, Burnaby and New Westminster. The report deals with complaints made by residents of loss of privacy, shadowing, loss of view, excessive noise and decreases in property enjoyment along the Skytrain alignment.

As a public institution, B.C. Transit owes a duty of fairness to the residents of the communities through which Skytrain passes which goes beyond its narrow statutory responsibility for transportation. However, even where legal liability may exist, a major objective of the report is to suggest constructive ways of addressing the continuing unfairness without subjecting the affected residents, the government and the court system to the expense and trauma of protracted litigation. To this end, the Minister of Municipal Affairs immediately waived all statutory time limitation defenses so that property owners would not be rushed into filing law suits while the Report's recommendations were being considered fully.

As a general fairness principle, individual citizens should not be required to bear a disproportionate cost of a public undertaking. However, some disruption is inevitable as the price of the economic, social, cultural and transportation benefits of urban life, and residents cannot expect to be insulated fully from it. The recommendations of the report attempt to balance these interests in a way that will, at relatively little cost, assist Skytrain to integrate harmoniously with the communities through which it passes, and so to reach its full potential.

B.C. Transit undertook a detailed analysis and costing of the report's recommendations, resulting in an announcement in February 1988 by the Minister of Municipal Affairs of a two-phase plan to address all of the report's recommendations.

Pesticide Regulation

The Environmental Appeal Board in B.C. has, among other duties, responsibility for hearing appeals against the issuance of permits for pesticide and herbicide use on publicly owned land. The major users of pesticides and herbicides are the Ministry of Forests and Lands, forestry companies, railways, public utilities, municipalities and regional districts. The Ombudsman's office has received many complaints from interested members of the public concerning the lack of opportunity to participate effectively in the decision-making process for determining the safe use of such substances. Their frustration and concern has led to court challenges, adverse publicity, civil disobedience and widespread disquiet.

A systems study was completed by the Ombudsman's office in December, 1987 which makes recommendations for the timely and meaningful participation by all interested parties in such decisions. The process has involved detailed consultation with government officials responsible for the Environmental Appeal Board, Pesticide Control, Agriculture and Fisheries, Forests and Lands, Health, Water and Wildlife. The recommendations address the issues of long range planning, timely public notice and consultation, comprehensive analysis of alternative measures, public access to accurate information, and procedural fairness in the appeal process. Together, these should reconcile the legitimate interests of users of these substances with the need for protection against unreasonable adverse effects. This study was issued as a public report in March 1988 and its recommendations have received the approval of the Ministry of Environment and Parks and the Ministry of Forests and Lands.

Medical Practitioner Numbers

In November 1987, the Ombudsman's office completed a systems study of the Medical Services Commission's administration of legislation restricting the issuing of practitioner billing numbers. This was a good example of the Ombudsman's jurisdiction regarding matters of administration, as distinct from the social and economic policy behind the legislation, which is a political matter, and the legality of the legislation, which is a matter currently before the Courts.

The findings and recommendations of the report addressed several issues of administrative fairness, including the need for an independent appeal system; the development and publication of clear, consolidated policies and criteria governing the issuing of practitioner numbers; procedures for ranking applications in practitioner areas with more than one hospital; and action to ensure that the purchase of a practice does not itself advance the application for a number.

The Medical Services Commission has responded positively to the recommendations and has forwarded those that require legislative authority onto the Minister of Health for consideration.

Non-Therapeutic Sterilization

The Supreme Court of Canada decision in **Re Eve** 7 N.R.1., prohibits the non-therapeutic sterilization of those who are incapable of giving personal, informed consent. This includes all infants and many mentally disabled adults. In spite of this judgment, the Ombudsman's office continues to receive information suggesting that such surgical procedures are taking place in B.C.

In order to find a systems solution to this concern, the Ombudsman's office has initiated discussions with the Superintendent of Family and Child Services, the Public Trustee, the Ministry of Health, and various medical and mental health organizations. The objective is to develop administrative procedures which will safeguard against illegal medical intervention, but not inhibit access of the mentally handicapped to medical treatment to which they have the capacity to consent.

AIDS

A further preventive initiative of the Ombudsman's office in 1987 was to recommend stronger provincial legislation protecting against unjustified discrimination of AIDS victims, which would prohibit action unrelated to the direct medical risks of transmitting the disease. The Ombudsman's mandate fundamentally involves individual fairness and creates the specific responsibility to recommend change to legislation that is unjust. The general public interest in halting the spread of this disease can be aligned with the individual fairness interest of AIDS victims through Human Rights and Health legislation which create a climate of security and confidentiality within which voluntary testing and tracing are encouraged.

The office was asked to review amendments to the *Health Act* in the fall of 1987, and concluded that the limited application of the preventative provisions to those who "wilfully, carelessly or because of mental incompetence" expose others to the disease, the confidentiality provisions relating to medical research, and the due process protections met the requirements of administrative fairness.

The recommendation by the Ombudsman's office for an amendment to the *Human Rights Act* which would confirm that "physical disability" included a "perceived" disability has not yet been effected. To do so would clarify government policy in a way which would alleviate unnecessary fear and could assist in curbing further transmission of the disease.

Aquaculture Regulation

During 1987 the Ombudsman's office received numerous complaints regarding administrative unfairness in the regulation of aquaculture along the B.C. coastline. These are being investigated on an individual basis.

However, the range of concerns and the variety of private and public interests makes this an appropriate and important subject for a more general review. Accordingly, the office commenced a systems study in the fall of 1987. This has initially involved the distribution of a discussion paper among all major interested public and private groups, including the Aquaculture Industry Advisory Council established by the Minister of Agriculture and Fisheries, and the Interministerial Aquaculture Steering Committee.

The study will review the statutory foundation for current administrative policy; consistency and public certainty in the exercise of administrative discretion; the opportunity for meaningful participation in the licensing process by those with significant interests in the outcome; and the fairness and effectiveness of dispute resolution procedures. It is hoped that the result will be constructive recommendations on administrative fairness that reconcile the various legitimate interests which currently appear to be in some conflict.

Children and Youth

The Ombudsman's office currently handles approximately 600 investigations per year involving children, including cases of youth detention, child protection, and health, education and community services. This is a highly complex field. Public services to children involve six provincial ministries and numerous categories of local and private sector service deliverers.

In addition to the general responsibilities of the Ombudsman's office, children's interests are specifically safeguarded by the Superintendent of Family and Child Services, the Public Trustee, and occasionally by Family Advocates appointed by the Attorney General.

In this situation, gaps, overlaps and conflicts can occur which affect the quality of service to children. It has been suggested that a specialized Children's Ombudsman is needed. This office has taken the position that what is needed is not additional offices, but perhaps more resources and certainly greater coordination among those that already exist.

To assist this coordination, in October 1987, a Deputy Ombudsman was appointed with special responsibility for children and youth issues. Working within the Ombudsman's office, he will coordinate all investigations involving the provision of public services to children, develop outreach programs to ensure direct access to the office, and act as a liaison with provincial and local agencies concerned with children's issues. This systems approach represents a recognition of the special needs and vulnerabilities of children in our society.

E. Private Delivery of Public Services

This section considers the nature of public services and discusses the ability of both government and individuals to hold the deliverer, whether in the private or public sector, effectively to account for quality in service and for cost efficiency. The issue is of current interest given the widespread discussion of the privatization of public service delivery and the changes that are likely to take place over the next year.

Two matters should be clarified at the outset. First, although there has been considerable public interest expressed in the notion of less government, there has been little noticeable demand for a reduction in public services. This represents a major frustration of modern life; the needs and demands of a diverse and complex society can involve the subordination of individual choice to paternalistic decision-making by government institutions. A major democratic challenge is to improve our ability to hold government bureaucracy more accountable for fairness to individuals. This is largely a matter of quality control over public services.

The second matter requiring clarification is that the nature of public services must be distinguished from the means of delivering them. Adam Smith described the state's responsibility as being to ensure the provision of national defence, individual justice and public services. Public services in our society are those whose social value is democratically determined to exceed the cost, but which would be unprofitable for any private person to provide at a reasonable or recoverable cost. Where these are both essential and not universally affordable, the cost is publicly underwritten.

By definition, it is not possible for a true public service to be offered in a free market because its very existence represents a market failure. However, as a matter of political choice, it is possible to redefine the nature of a service so that it no longer represents a public responsibility. This is "privatization" in its true sense of changing the nature of a service from public to private by passing the full responsibility for controlling, owning, and delivering the service to the private sector.

However, it is possible to deliver a service which remains public in nature through the private sector, and this is what most of the current debate in British Columbia is about. The distinction between the nature of the service and the delivery mechanism is fundamental because understanding it allows us to turn the focus of the private versus public sector debate from one of ideology into one of accountability. Public services are paid for out of public funds and, above all, these must be spent in the most cost effective way.

Private services are those which we have the opportunity to purchase as private individuals for reasons unrelated to the public good. The seller receives a private benefit which exceeds the private cost; and the buyer exercises private control over quality and cost through market choice. While government may still have a role in regulating the provision of private services for the protection of the public, there is general consensus that they should be provided by the private sector.

On the other hand, while it is government's responsibility to ensure that public services are provided, in theory any public service is capable of being delivered by the private sector. The key to making the optimum decision on delivery model is the relative cost benefit of achieving the required standard by different means. If all things are equal, which they rarely are, then the issue will be determined simply as a matter of democratic preference.

Public services, whether delivered by a public bureaucracy or a private firm, must meet set standards. The deliverers must be responsible for quality to both government and individual consumers. Quality in private or public services is not necessarily synonymous with high cost. Rather it involves matching performance with expectation. To the extent that private services are offered in a perfect market place, the existence of real alternatives holds the competitors accountable for meeting the expectations of consumers. Public services are never subject to this market control, even if they are provided privately. While privately owned firms might bid competively for the right to provide a public service, what they acquire is non-competitive market power during the term of their service contract.

However, there may well be a quality incentive to public and private sector corporations and employees based on their desire to retain the right to provide the service in the future. Therefore, what government requires in addition to thorough cost-benefit analysis is the ability to monitor and maintain a determined level of quality.

Public services are delivered by individuals, whether under an employment contract in the public sector or a business contract in the private sector. Government holds the public sector accountable for quality through its direct management expertise. The mere size of many public bureaucracies can make this a formidable task. Government holds private firms accountable for quality in the delivery of public services by setting, monitoring and enforcing exact standards. Whereas it manages the public sector, it must regulate the private sector. If quality is to be ensured in public services, it is not possible to achieve both private delivery and deregulation at the same time.

In making what is essentially a business decision, government must consider the full cost of achieving the required quality of service by each delivery model, including the cost of effective management and regulation. The Auditor General's office has a major responsibility to assist government in such cost-benefit analysis. Although private and public corporations may have different incentives and penalties with which to stimulate productivity and quality, there is often not much to distinguish an individual employee in a private or public sector corporation. Despite the conventional wisdom, private employees do not necessarily work harder and public employees do not necessarily care more.

Private or public deliverers of public services must also be held accountable for quality to individual consumers. This accountability is tenuous because of the market power held in either sector. The Ombudsman's office has been established as an independent quality control mechanism to balance the market power of the public sector. Individuals and firms can express their concerns to the office regarding the quality and fairness of public sector actions, omissions, decisions and practices. Through this process, the Ombudsman's office assists public managers to identify and resolve quality concerns.

Where public services are delivered privately, government will want to ensure that private sector firms are equally accountable to individual members of the public for quality. While private delivery contracts must be monitored and enforced by government through general cost and quality controls, methods must also be in place to resolve individual complaints. While the Ombudsman's office can operate effectively with large public institutions to ensure fair practices, it will be more difficult to deal with large numbers of small private deliverers of public services. Nevertheless, private contracts negotiated with government must provide for access to the office by individual users in order to ensure quality control over the public services delivered.

It is likely that neither the fears nor promises of private sector delivery will be realized over the next year. However, it is important to focus the discussion on the real issue, which is to determine the most cost effective method of delivering high quality public services.

F. Outstanding Issues and Updates

Unproclaimed Authorities

In last year's report, it was recommended that the *Ombudsman Act* be fully proclaimed to include the legislated jurisdiction over local government, educational and health facilities, and the statutory professions. This has not yet been done. However, the Ombudsman's office is being asked with increasing frequency to assist in the resolution of complaints which concern one or more of these unproclaimed authorities, together with jurisdictional authorities such as provincial ministries, boards and crown corporations. Because of the neutrality and independence of the office, it can often be helpful in reconciling apparently competing interests in ways that are also acceptable to individual members of the public.

Fundamental to the effectiveness of the Ombudsman's office in this role of consensual negotiation is the willing acceptance of its recommendations by the various public authorities. In this regard, it is particularly relevant that the mayors and aldermen of the province passed the following resolution at the annual UBCM convention in September, 1987:

> WHEREAS *The Ombudsman Act*, Bill No. 63 was unanimously passed by the Legislative Assembly of the Province of British Columbia in 1977;
>
> AND WHEREAS The Schedule of Authorities, which empower the Ombudsman with jurisdiction at municipal, school, hospital, and regional district levels have NOTyet been proclaimed:
>
> THEREFORE BE IT RESOLVED that the Union of British Columbia Municipalities calls upon the Provincial Government of British Columbia to respond to the dictum that "Justice delayed is justice denied" and, after ten years of waiting by the citizens of British Columbia, proclaim forthwith the remaining Schedules of *The Ombudsman Act*, Bill No. 63.

In addition, at the Social Credit Party convention in October, 1987, the following resolution was passed:

> WHEREAS the voters of British Columbia were promised an Ombudsman with full powers but only two out of the twelve parts of the *Ombudsman Act* were proclaimed;
>
> AND WHEREAS the *Ombudsman Act* designates the municipality and regional districts as authorities subject to investigation but seventy-five per cent (75%) of complaints to the Ombudsman towards municipalities and regional districts cannot be dealt with because of the lack of proclamation of the remaining part of the proposed act;
>
> BE IT RESOLVED THATall remaining sections of the *Ombudsman Act* as originally proposed be

proclaimed in force so as to give the Ombudsman full powers, including the power to investigate municipalities and regional districts.

In addition to the resolutions of these organizations, the Vancouver Elementary School Administrators' Association brief to the Royal Commission on Education recommended the "setting up of an education ombudsman's office with powers to receive and investigate complaints. Alternatively, we recommend that the royal commission call for the proclamation by the provincial government of Sections 3 to 11 of the schedule of the *Ombudsman Act (1979).*"

The board of directors of the B.C. Associationn of Social Workers has also approved a recommendation that "the B.C. government be urged to proclaim Sections 3-11 of the *Ombudsman Act* Schedule of Authorities, to ensure appropriate preventive or remedial responses to administrative decisions or procedures adversely affecting children and youth."

A response from the provincial government to these resolutions and to the continuing recommendation of the Ombudsman's office is awaited.

Ex Gratia Payments

In last year's annual report it was recommended that the provincial government seek standing legislative authority through the 1987/88 *Supply Act* or an amendment to the *Financial Administration Act* to make ex gratia payments, on the recommendation of the Ombudsman or on its own initiative. This is essential to resolve unfairness where a monitary award is appropriate but no potential legal liability exists to permit payment under the *Crown Proceeding Act.*

The government accepted this recommendation by including authority under Vote 67 of the 1987/88 *Supply Act* for the Minister of Finance and Corporate Relations to make ex gratia payments out of the Contingency Fund.

Eddy Haymour

The importance of this authority to make ex gratia payments was clearly demonstrated in August 1987 in the Eddy Haymour case, when the provincial cabinet accepted, without reservation, the findings and recommendations of a confidential report of the Ombudsman. The recommendations were as follows:

1. That an ex gratia payment should be made to Haymour in the amount of $140,000.
2. That an ex gratia payment should be made to Haymour's ex-wife in the amount of $10,000.
3. That reasonable legal expenses should be paid by the provincial government to Haymour's former lawyer for post-litigation actions related to his pursuit of a just settlement.
4. That the provincial government, on behalf of the Crown in the Right of B.C., make a public expression of regret for the harm done to Haymour through the wrongful acts of the Crown between 1971 and 1975.

The recommendations took into account the wrongful acts of government officials, contributary factors considered to be the personal responsibility of Haymour, and the right of the public, as taxpayers, to be protected by some reasonable limit on ex gratia payments from public funds. All recommendations were carried out forthwith, including ex gratia payments under the new authority noted above and public statements of apology by the Premier and the Attorney General. The current government is to be commended for its strong action to recognize and compensate for the injustice suffered by Haymour.

The extraordinary and tragic story of Eddy Haymour's frustrated attempt to develop Rattlesnake Island in Okanagan Lake is an unsettling reminder to us all of the potential unfairness that can befall individuals through the arrogance of government. The Ombudsman's report considered the appropriateness and amount of compensation to be paid on account of personal harm suffered by Haymour as a result of wrongful acts of provincial government officials between September 1971 and August 1975. None of the elected or non-elected officials responsible for the improper actions is now in office, and the wrongdoings represented failings of both governing parties of that time.

The government actions to stop Haymour's development were the subject of a judgment of Justice MacKinnon of the B.C. Supreme Court in *Haymour Holdings Ltd. v. R. in the Right of British Columbia (1986) 5 B.C.L.R. (2nd) 145* delivered in August 1987. Justice MacKinnon found government action to be "discriminatory", "deceptive and misleading", "highly improper, if not consciously cruel", "unfair", "in bad faith" and "unconscionable".

The eventual and inevitable failure of the development motivated Haymour to threatening and desperate behaviour. As a result, he was in succession arrested, charged with criminal offences, found unfit to stand trial, incarcerated without bail for nine months, found not guilty by reason of insanity at trial, and confined in Riverview Hospital at the pleasure of the Lieutenant Governor for 11 months before being discharged. During his 20 months of incarceration and confinement, his wife divorced him and left the province with his children; his house was burned and then foreclosed upon; Rattlesnake Island was deeded to the Crown in what was later determined by the Supreme Court to be an unconscionable transaction; and Haymour experienced non-compensable losses of time and resources related to the development. In an irrational and extreme reaction to these events, Haymour committed acts of violence against the

Canadian Embassy in Beirut in 1976. He has been unsuccessful in obtaining and keeping steady employment since his return to Canada in 1976.

Although the Supreme Court awarded Haymour approximately $155,000 in commercial damages reing to the loss of his property, it was determined by the Court of Appeal that he had no right to recover additional personal and punitive damages against the Crown because of the wording of the since repealed *Crown Procedure Act(1960)*. Because there was no remedy at law for his personal loss, Haymour and the Attorney General requested the Ombudsman to investigate and make recommendations on the question of ex gratia compensation. This lead to the payments and apology of August 1987.

The case is an example of the role that the Ombudsman's office can play in resolving unfairness even when there is no legal remedy. Fair treatment of individuals by government is the essence of our democracy, and deliberate breaches of the trust placed in public officials must weigh heavily on the public conscience.

Regional Visits

During 1987, the Ombudsman continued the practice of periodic regional visits, travelling to Prince George, Quesnel, Kamloops, Merritt, Kelowna, Penticton, Nelson, Cranbrook, Fort St. John and Dawson Creek. In each community, meetings were held with representatives of community groups and government managers, and evening clinics were conducted for individual members of the public. These were found to be effective in explaining the constructive role that the Ombudsman's office can play, and in gaining a better sense of the different challenges presented in the various regions of the province. Increasingly, complex problems between individuals and state involve various levels of government and require on-site discussions to resolve.

This cost-effective outreach will be continued periodically in 1988 to other areas of the province. At the same time, effective use of the toll-free phone lines continues to ensure that individuals from all parts of the province have direct and timely access to the Ombudsman's services in Vancouver and Victoria.

Principal Group

An investigation was commenced in December 1987 into alleged regulatory failure by the Superintendent of Brokers regarding the operations in B.C. of the Principal Group of companies, including First Investors Corporation Ltd. (F.I.C.), and Associated Investors of Canada Ltd. (A.I.C.). The investigation comes as a result of a large number of written complaints received by the Ombudsman from aggrieved B.C. investors. Seventeen thousand B.C. investors stand to lose up to $50 million as a result of the financial collapse of these companies.

The investigation involves the questioning of all officials and the review of all documents relevant to the regulation of the companies in B.C., and the consideration of the statutory duty owed to individual investors.

The Ombudsman's investigation will not be duplicating work already done in B.C. by Lyman Robinson under the *Trade Practices Act*, or in Alberta, where a court ordered inquiry and an Ombudsman's investigation are underway. However, the investigation will be coordinated to ensure that no gaps are left.

Open and fair government requires that individuals have the ability to hold public officials to account. The *Ombudsman Act* makes the Ombudsman responsible for the independent investigation of complaints regarding the administrative decisions, acts and omissions of provincial government ministries, agencies and officials. The concerns with possible regulatory failure in the Principal Group matter come squarely within the Ombudsman's responsibility.

Selected case summaries are detailed under the headings of each ministry and other authorities. The cases are selected for their individual interest or representative significance.

Many of the cases reveal, in the course of investigation, services, procedures and appeal processes perhaps not widely known but already available to the general public within the existing policy of the various ministries.

Tables preceding the case summaries within each authority detail the total number of cases and their disposition. It should be noted that the volume of cases does not necessarily reflect the amount of time required to conclude their investigation. Time spent on each case varies considerably.

Part II
Case Summaries

Ministry of Advanced Education and Job Training

The Ministry of Advanced Education and Job Training deals with universities, colleges and institutes, job training and apprenticeship programs, applied science and research, the Women's Secretariat and the Youth Council.

Complaints about this ministry usually involve apprenticeship and job training programs, universities, colleges and institutes and the ministry's Student Services Branch. Ombudsman jurisdiction to investigate complaints involving universities is restricted to the Board of Governors and to those colleges and institutes where the majority of the governing body has been appointed by the Lieutenant-Governor in Council. Despite these restrictions, we have established and maintain a good rapport with the colleges and institutes that are within our jurisdiction and are often able to assist complainants in reaching a resolution.

The ministry's Student Services Branch has responsibility for student loans and deals with large numbers of people. We receive several complaints each year from students complaining about delay in processing their loan applications. Delay is usually crucial to the student. In the course of our investigation, we often discover that the delay is due to the student either completing the form incorrectly or not enclosing all necessary documentation. Our assistance often involves simply informing the student of the reason for the delay. The student can then either amend the application or supply the ministry with the required information. Again, thanks to the efforts of the ministry employees, complaints are usually resolved in a timely fashion.

Resolved:	17
Not resolved:	-
Abandoned, withdrawn, nonjur:	2
Not substantiated	7
Declined, discontinued	7
Inquiries	8
Total number of cases closed	41
Number of cases open December 31, 1987	12

Course idea failed to net job

A woman approached a community college with the suggestion that a course in janitorial work would be helpful to the unemployed in the area. After consideration, the college decided that the idea had merit. It secured funding through the local Canada Employment Centre, which reserved all 16 openings available in the course for its own referrals. The college then developed a curriculum, using a similar program from another community college and provincial guidelines. The position of course instructor was advertised in the local newspaper and the only applicant, the head of the local hospital's housekeeping staff, was hired.

The woman who originally suggested the course complained to the Ombusdman's office that the local community college had failed to notify her of an opening for the position of course instructor. Because she had suggested it, she felt some 'ownership' of the course. But she had not seen the advertisement and did not submit an application.

We were not able to substantiate the woman's complaint. The college saw itself as responding to a request from the community for a course and did not recognize any 'ownership' of the course. There may have been some moral obligation to have notified her of the position but the college did advertise for a full week. The woman's claim of 'ownership' was

also undermined by the fact that she did not provide the college with any materials, such as a course outline or project plan. The college did all development work.

Although this course was intended as a one-time course, it is the college's policy to re-hire an instructor should the course ever be repeated. At our request, the college agreed to waive this policy and re-advertise the position, should the course be offered again. The woman found this to be an acceptable compromise.(CS87-1)

Appeal process too slow

A woman was asked to withdraw from a psychiatric nursing program at a B.C. college. She appealed through the college's appeal process and was successful, but the process had taken two weeks of an eight-week course. Because patient safety was at stake in a practicum portion of the course, the complainant was not permitted to continue the course during the appeal process. She withdrew from the program because she did not believe she would be able to catch up.

The college did offer to allow the student to re-enter the program the next time it was available. We did not find that the college acted improperly in the administration of the existing appeal process but we did express our concern to the college administration that, while two weeks may seem like a short time to conclude an appeal, it is a long time to be absent from an eight-week course. We are continuing to monitor the length of appeal time at colleges. (CS87-2)

Appeal process unfair

A student had twice been asked to withdraw from the practicum of a regional college's nursing program and, as a result, she was asked to withdraw from the nursing program altogether. The student had appealed both decisions involving the practicum course, but had not been successful. She contacted our office because she felt there was unfairness inherent in the college appeals procedure.

While we agreed to examine the procedure itself, we declined to consider the merits of the college decision, which involved professional issues around the student's nursing skill, a matter we were not qualified to consider.

The appeals procedure at the college began with the student's attempt to resolve the matter with the instructor. If such an attempt failed, the student then had access to a two-level appeals procedure. The first level involved an appeal to either the department head or the college division head. If this did not resolve the matter to the student's satisfaction, the matter moved to the next level of appeal.

The second level appeal involves two "readers" who review the information independently. If they cannot reach a decision, the department head becomes the third reader and may chair a hearing. It is therefore possible that the department head could be asked to decide upon an appeal of his or her own first-level decision.

After reviewing the college appeals procedure, we concluded that the procedure employed did involve the potential for procedural unfairness. Without reference to the merits of a decision rendered by such an appeal body, we felt that the system failed to give the appearance of being fair and unbiased.

We met with the college president and the faculty involved in the student's appeal. Following discussion of our concerns related to the appeal procedure, the college agreed to change its appeal structure to exclude the department head from the first level of appeal. The student is now required to appeal to the division head at the first level of appeal. If not successful, the matter proceeds to the second level. The department head continues to function at this level, becoming the third reader if the two appointed readers are unable to reach a decision. The department head, however, has had no involvement with the appeal until this point. The new procedures avoid any appearance of possible conflict of interest in having one person review his or her earlier decision and we considered the matter resolved.(CS87-3)

No loan status for one course

A student complained to the Ombudsman's office when the ministry would not give her student status while she was taking one course at university. Student status would allow access to interest-free student loans. The student was also concerned that the ministry uses the date of graduation as the date on which loan remission on interest charges on student loans begin, rather than the date of the final exams.

Ministry policy requires that at least 60 per cent of a full-course load be taken in order to be eligible for interest-free status. Therefore, under the policy, she was clearly not eligible. On the question of interest charges, the date of the final exam is not used because the student may not graduate and may still remain a student. The ministry receives verification of graduation from the college or university prior to initiating 'loan remission' on interest charges. It was also pointed out to the complainant that the later graduation date for interest initiation was more beneficial to her financially. (CS87-4)

Apprenticeship and Employment Training Branch

As in the past, our office received few complaints against this branch. For the most part, those we do receive involve persons who, for one reason or an-

other, have a problem obtaining an apprenticeship qualification or holding onto the qualifications they have. The case outlined below is a typical example of our involvement.

No record of apprenticeship hours

A worker contacted our office after he was not permitted to write the Interprovincial Steamfitter/Pipefitter Examination. Apparently, he was unable to produce documentation to the branch's satisfaction proving he had the requisite number of apprenticeship hours to qualify for a steamfitter's ticket.

According to the complainant, the company he had worked for had gone out of business some time ago, and there were simply no records of his employment available to him to prove his work experience.

We passed on his remarks to the branch director who responded by making arrangements for the complainant to appear before the Steamfitter/Pipefitter Examination Board to be interviewed by its members, thereby giving him an opportunaty to satisfy the board that he could meet the required standards. (CS87-5)

Ministry of Agriculture and Fisheries

The Office of the Ombudsman receives few complaints concerning this ministry, formerly known as the Ministry of Agriculture and Food.

Issues arising from the operation of the Canada /British Columbia Crop Insurance Program (administered by the Province) are currently the subject of one investigation. A major undertaking of the Ombudsman's office, a detailed review of the province's role in administering Crown Land and foreshore waters for the purpose of coastal aquaculture, also involves the Ministry of Agriculture and Fisheries. The ministry has provided valued logistical support in the information-gathering phase of this review, which is described in detail under "Systems Reviews." It is worth noting that this ministry acts as "lead ministry" in the approval of production plans for fish farms, the development of provincial policy and the coordination of programs - including financing and incentives - offered by various agencies.

Resolved:	1
Not resolved:	-
Abandoned, withdrawn, nonjur:	2
Not substantiated	6
Declined, discontinued	-
Inquiries	2
Total number of cases closed	11
Number of cases open December 31, 1987	7

On tranferring milk quotas

A dairy farmer complained to the Ombudsman's office that he was unfairly discriminated against by the B.C. Milk Board because it had reduced his milk delivery quota while he was in the process of selling his dairy operation and transfering the milk quota to the new purchaser. The man said it resulted in a loss to him of about $60,000.

Provincial legislation gives the British Columbia Milk Board the power to regulate milk marketing in B.C. The board does this by setting quotas on how much milk a producer may deliver each day.

The Graduated Entry Daily Milk Quota Building program was introduced in August 1986 to expand the number of milk producers by making quotas available to new dairy farmers. The program stipulates that whenever a producer transfers his or her daily milk quota, as in the purchase of the dairy operation, the quota is reduced by 10 per cent, which is then made available for a new quota. In this manner, an eligible person could enter the dairy industry other than by acquiring a quota transfer. The only exception to the 10 per cent quota reduction is when a producer transfers his or her quota to a spouse, children or grandchildren.

This was not the case in the complainant's quota transfer and the reduction in quota meant that his dairy operation became less valuable in the eyes of the purchaser.

Our office examined the issues and concluded that the British Columbia Milk Board acted in a consistent, fair and legal manner. The Minister of Agriculture and Fisheries, in a letter to the complainant, took the position that with any change in policy such as introduction of this Graduated Entry program, some persons will be affected and some will not. The situation is no different for any other change to existing policies or regulations and is not restricted to dairy producers. As for the issues the complainant raised about incurring financial losses on the transfer of the quota, the minister pointed out that producers enter the dairy business with no assurance of financial gain. There is also no assurance that when a person chooses to leave the industry he will be able to recoup the cost of acquiring a quota.

We were unable to support the complainant's view that he was unfairly discriminated against when a milk quota assessment was levied on his quota transfer. Introduction of the new program, in our view, did not constitute an act made pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory.(CS87-145)

Ministry of Attorney General

Complaints about the Ministry of Attorney General encompass a broad spectrum. While a great number of issues are raised within the corrections system, Ombudsman investigators are called to investigate complaints involving the Public Trustee, the *Private Investigators and Security Agencies Act*, the *Coroners Act*, police matters and the Provincial Emergency Program for which the ministry assumed responsibility January 1, 1987.

The Ombudsman's office has a sound working relationship with the ministry. A procedure to deal with complaints against the police continues to operate very well. Cases involving the RCMP are outside the jurisdiction of the Ombudsman. However, advice is given on procedure and assistance is given to put procedures in place. A similar working relationship exists in regard to municipal police matters.

Resolved:	500
Not resolved:	-
Abandoned, withdrawn, nonjur:	95
Not substantiated	384
Declined, discontinued	282
Inquiries	84
Total number of cases closed	1345
Number of cases open December 31, 1987	259

Removing charge from title

A water supply agreement with the Southern Okanagan Land Co. Ltd. had been a charge on the titles of many properties in the Southern Okanagan since May 1910. The company has long since ceased to exist. Many of the property owners, seeking to have the charge removed, were told by a local Land Titles employee simply to ignore it.

Not happy with the response they received, the matter was brought to the attention of the Ombudsman. We clarified with the Land Titles office in the area that the *Land Title Act* or the *Property Law Act* provided for removal of such charges. The complainants were then directed to the office where the registrar would assist them with the process of having the charge removed.(CS87-6)

Sheriff with order not trespassing

A deputy sheriff entered onto private property to remove licence plates and registration from a vehicle. The property owner complained to the Ombudsman's office, believing a trespass had occurred.

We discussed this matter with officials from the sheriff's office and the Motor Vehicle Department. The deputy sheriff had an order from the Superintendent of Motor Vehicles. Under the *Motor Vehicle Act*, that order had the same force as a writ and authorized the deputy sheriff, as a peace officer, to enter onto private property.

We appreciated the concern of the property owner that it appeared that ministry employees were permitted to come onto private property and remove items. However, we could not fault the ministry for enforcing an order authorized by law. (CS87-7)

Was ring communal property or stolen?

Our office has no jurisdiction to investigate the decision of Crown counsel to prosecute a case or not. That decision is considered to be the sole perogative of the Crown and one that should not be subject to any outside influences. However, we receive many complaints from people about such decisions.

Many people contact our office hoping that we may be able to assist them in persuading the Crown either to proceed with or to drop a prosecution. Our response is that we have no authority to investigate those decisions of the Crown. Often, however, we are able to facilitate a meeting with Crown counsel who will explain their procedures and decisions.

The Crown may not proceed with criminal charges because it believes the matter to be of a civil nature. One example, the subject of a complaint to the Ombudsman's office, involved a ring that disappeared from a family home when the wife moved out. The ring had been in the husband's family for several generations and was intended for his son. The ring was valuable and the husband feared that the wife had taken it and sold it. The husband wanted the Crown to proceed with criminal charges of theft. He arranged a meeting himself with Crown counsel but was advised that this matter was probably more appropriately a civil case as it was possible the ring would be considered matrimonial property. The Crown must always consider if there was a criminal offence which could be prosecuted successfully. This was not its opinion in this matter and civil action was suggested as a possible alternative. When this man approached the Ombudsman's office, we obtained further information from a policy advisor of the Ministry of Attorney General and put it in the hands of the complainant. (CS87-8)

No legal right to seized tools

A man was concerned that certain improprieties may have occurred over the course of a seizure and sale of the assets of a debtor company.

The company had ceased operation and the man was owed money for wages due. The director of employment standards had commenced action as a result of this man's and other complaints. Tools which belonged to the company had been seized by the

sheriff under a Writ of Execution issued to the director of employment standards. Because the company owed him money, the man wanted to be given those tools. When the sheriff refused to release the tools, this individual complained to the Ombudsman's office.

Even though the complainant was owed money by the debtor company, he had no legal right to the seized tools of that firm. When the sheriff seized the tools, he was acting on behalf of the Employment Standards Branch, not the individual. If the complainant wanted the tools from the debtor company, he would have had to bid for them along with any other prospective purchasers at a sheriff's liquidation auction. The complainant was frustrated by what he perceived to be bureaucratic red tape, but the sheriff acted correctly in not releasing the tools to him. (CS87-9)

Correspondence went unanswered

People frequently contact our office to complain that correspondence has gone unanswered. In one case, a man told us he had contacted Crown Counsel as far back as 1985 in an attempt to find out the status of charges against the alleged murderer of his mother. He believed he had received a "cold-shoulder" from the ministry because he had received no response.

We took this problem to the ministry. A subsequent search of the correspondence record and the people to whom the letter would have been forwarded did not turn up any correspondence from the complainant. However, due to the severity of the crime and the complainants ties to the victim, a ministry official wrote a lengthy letter to the complainant which clarified the situation.(CS87-10)

Frustration just getting answer

After a successful small claims action, an individual wrote to the court registry requesting a written copy of the judge's decision. Unfortunately, the letter was placed into the court file, and was not answered.

This individual then attempted unsuccessfully to telephone the court registry several times. He was unable to make contact with the appropriate individual due to what was later attributed to an undiscovered flaw in the telephone system.

Frustrated at the delay, the man wrote again to the ministry and also contacted our office. When we made enquiries at the ministry, we were informed that a response and a copy of the court decision had already been mailed to the man. The telephone system was repaired and the Attorney General wrote to the complainant extending an apology for the delay. (CS87-11)

No details given on wiretap

Often people complain when they get no response to enquiries from government ministries. In this case, the complaint came from a person who **had** received a letter. The letter, from the Ministry of Attorney General, informed her that she had been the object of a telephone wire-tap. No further details were contained in the letter. When she contacted the ministry, she was told that no details could be released. The woman contacted us to help get the information she wanted.

Section 178 of the Criminal Code sets out what notification a person is entitled to and which information an individual may access. The ministry was acting in accordance with the legislation when it stated no further details could be released. Under a provision of the federal *Privacy Act*, a private citizen may obtain access to some of the data kept in federal government files about themselves including some information in RCMP files. Information kept on RCMP files may help clarify why or when a line was tapped.

We informed the complainant of the *Privacy Act* provisions. We further suggested that she contact the local division of the RCMP for further information. Usually investigations are completed and all charges have been laid prior to the notification of a wiretap being sent out. If the person had not been charged with any offence, the police may be willing to release more details.(CS87-12)

Role of probation officer not 'unfair'

A father contacted our office, concerned about the treatment his son was receiving. The son had stolen and damaged a fire truck. He was ordered by the court to pay back the damages at a rate of $600 per month. The $600 was reduced by a further court order to $300. As it turned out, the young man was out of work and could no longer continue to repay $300 per month. The probation officer told the chap that he would breach his probation order and he would have to return to court. The father thought this was most unfair.

The probation officer has no control over the terms of the restitution order. If a person fails to meet that order, it is the officer's duty to "breach" the order. This is not a punitive action but rather a method of returning the matter to court. In court, the individual can explain why the conditions set out in the order can no longer be met and the court can decide if the terms of the order need to be altered or varied. In this case, a lesser amount of restitution per month may be ordered. We explained the role of the probation officer, Crown counsel and the judge to the father and considered the matter resolved. (CS87-13)

No form for repairer's lien

A man repaired a truck but he was not paid for the work. He wanted to file a repairer's lien on the vehicle and thought there would be a form available at either the court registry or the sheriff's department. When he learned there was no form provided, he contacted our office immediately because he was afraid that the vehicle would not be seized within the time limit set out in the legislation.

It is actually the Ministry of Finance and Corporate Relations which administers the *Repairer's Lien Act*. When we contacted that ministry about this man's concerns, they explained that no form is provided because a section of the Act sets out the necessary information. On the basis of that information, the complainant filed a lien in the time alloted and the vehicle was seized by sheriff services.(CS87-14)

Public Trustee's Office

Not many people are aware of the Public Trustee's role until after some disaster has struck. A debilitating disease, senility, or loss of mental function from a trauma such as a car accident, leave a person incapable of caring for financial or personal affairs. At such times, next of kin or close friends may be too upset or too busy to stop and seek legal advice on the situation.

If the friend or relative does not get legal advice and apply to court to be appointed "committee" with authority to act for the person, it is possible that the physician involved will refer the patient's situation to the Public Trustee. Even at that stage, if there is no emergency the Public Trustee will try to locate and contact 'family' to see if they wish to act. In many cases, however, because there is no available or appropriate family, the Public Trustee will be appointed committee. Committeeship gives broad powers, to receive and spend money, settle or initiate law suits, sell real property and so on. This can be very disconcerting to family who feel they have lost control and lost their "rights" to care for the patient.

An alternative is available. B.C. laws allow for the granting of an enduring power of attorney, a document which pre-selects the person you wish to act for you if you are rendered incapable of making your own decisions. The current medical realities - that we may survive trauma or physically outlive our intellectual faculties - suggest we may all wish to consider taking the step of granting such a power of attorney. (CS87-15)

Bank account meant independence

It is a difficult time for a person whose affairs are in the process of being taken over by Public Trustee. Someone who is starting to fail and lose their ability to cope may still feel quite independent, even though medical opinion is to the contrary. In this case, an elderly man was in a care home. Moving there had been hard for him to take. Loss of his financial independence would only heighten his anxiety, so staff of the home asked the Public Trustee to: 1) give them time to forewarn the patient, and 2) leave him a small, running balance in his bank account, so he could retain some independence.

The Public Trustee agreed. Unfortunately, somehow the commitment was overlooked, and the entire bank account was closed out without warning. Fortunately, staff at the care home were able to work with the man, to encourage him through this setback. We discussed the problem with the Public Trustee who apologized for the oversight and reopened the man's bank account.(CS87-16)

Extra money no mistake

We received a call from a woman who had had custody of two boys since their mother's death. Each boy had a small trust fund at the Office of the Public Trustee, payable to them when they reached the age of 19. When the oldest boy turned 19, he got his money. Two weeks later, a letter arrived stating "your money may be claimed by contacting. . ." The woman called the Ombudsman's office, wanting to know if this was a mistake or if more money had been found.

We made an enquiry on the woman's behalf and found that the letter was not a mistake. Although the family had not known it, each son had two trusts, one held by the Public Trustee, the other by the Ministry of Finance. The letter from the Public Trustee had been a courtesy reminder to claim the other money.(CS87-17)

Ex-wife sought to block committeeship

The Ombudsman's office was contacted by the ex-wife of a man who was injured at work. His head injuries resulted in a lengthy hospitalization, followed by permanent loss of some of his mental functions and so, still married to him, she was appointed committee (trustee) of his financial affairs. As time passed, the woman decided to seek a divorce, which meant that she would be in a conflict of interest if she continued as committee. She did not want the in-laws to assume committeeship because she had major differences of opinion with them about what was in the husband's interests. Instead, she asked that the Public Trustee be appointed to manage her husband's affairs and this was done.

Over the next few years, the divorce went through. Property was divided. The ex-wife and two children were awarded monthly maintenance, made financially possible by monthly income from a substantial

WCB award for the husband's injury. However, the Public Trustee now consented to her brother-in-law's assumption of the committeeship and this woman was concerned that he would delay or avoid the maintenance payments because of past disputes. She felt that her family's income was jeopardized needlessly because, she believed, the Public Trustee should never have agreed to the brother-in-law's request.

The practical problem here was ensuring that maintenance payments would be made. In this case, the woman could apply to the WCB for direct payment of the maintenance amount. The board has the power to "divert" an award to family members of the injured worker. We informed this woman that all she need do was apply, explaining the situation which gave rise to her request.(CS87-18)

Corrections Branch

Acting on the premise that people within institutional facilities do not have the same level of access to the Ombudsman's services as those in the general community, we have continued our program of routine visits to the province's correctional facilities.

One thing that has struck us on our visits is that effective administrators seem to be persons who are frequently in touch with the people in their facility. One director informed us that he would not have the feel of the place if he did not walk around a certain number of times each day. Other directors who find themselves buried in administrative routine are saved by the ability and effort of their senior staff, but the direct personal contact of a director appears to be the most effective means of keeping on top of the situation.

Directors who are most secure in themselves are the most welcoming to Ombudsman visitors. They are proud of their institution and want to show it off to interested people from the outside. They recognize the "safety valve" function of the Ombudsman's presence. They realize that if problems are brought to the Ombudsman's attention, they would want to be aware of and deal with them so as to maintain the quality of their operation.

When we visit correctional institutions, we assume that respect for an individual's dignity is a fundamental principle of the Corrections Branch's treatment and handling of those confined. By virtue of a court determination, individuals in custody are made dependent on the Corrections Branch for practically all daily essentials and they are directed throughout the day by the laws, rules, orders and programs of the centre where they are held until the sentence is satisfied. It is the Corrections Branch that determines where a sentence is served and how much time will be spent in the various facilities, from maximum security to minimum security.

Some Continuing Concerns

Many complaints are raised each year which relate to the basic facilities of the secure correctional centres. Usually, we take for granted the right of a person to have access to good water. But the Prince George Regional Correctional Centre uses water which is extremely hard, often discoloured and sometimes poor tasting. Some staff refuse to drink it and bring water from home for their personal use. However, inmates have no choice in using the institutional water. They note that after showering, a white film or residue is left on the shower stalls. The complainants feel that the water used gives rashes. Fortunately, the facility has been connected to new city water lines. Like some of the facilities at Burnaby and Kamloops, the Prince George centre issues buckets to the inmates for toilet use during the night because the cells do not have private toilets for each inmate. Adding further affront to personal dignity, the buckets in Prince George do not have lids.

In our annual report of 1985, we described the facilities at the Lower Mainland Regional Correctional Centre as "inadequate." Events of the past year have underscored that observation. Earlier, we had used the term "dehumanizing" in reference to the primitive and archaic structures still used by the Corrections Branch at Burnaby, Kamloops and Prince George. We recognize, however, that transition to newer facilities is a slow and costly undertaking for this branch of government.

The capital costs of facilities are only part of the problem in financing the Corrections Branch. Operational costs must take into account the program needs of residents. For example, we found that for a number of years, inmates in maximum security in colder areas of the province were kept indoors throughout most of the late fall, winter and early spring because the clothing supply was inadequate and the outside yard was difficult to supervise. Adequate funding must support the additional costs of operating a prison where temperatures are extreme. This year, we were pleased to note increased attention to outside exercise during winter programming at the Prince George centre. Attention to some of the basic needs of individuals, such as outside exercise, decreases the unrest in the prison and the number of complaints we receive.

Individuals committed to prison have a right to expect that the institution will provide a reasonable level of care and protection from assaults from other residents. A competing principle is that the inmate should be held in the least restrictive environment necessary to achieve the objectives of imprisonment. When this latter principle is applied, a more cost effective system is achieved as those who do not need tight security and constant supervision can be placed in work camps where programs off the

grounds in the community can be utilized. However, some inmates placed in secure custody still face the risk of attack because their charges, such as those for sex offences, may be considered repulsive by other residents, or because they may be perceived as informers or persons who are just "weird." Prison administrators must take all reasonable steps to provide a standard of protection to all individuals entering custody. Prince George, Victoria, Burnaby, and Vancouver institutions provide reasonable separation of inmates to protect the vulnerable. We are concerned that because of its reluctance to acknowledge the protective status required in some cases, Kamloops may experience a tragic incident before they move into more secure and adequate facilities which will allow them to have better control and more adequate supervision of inmates who need protection.

Meal service at some facilities continues to be periodically problematic. Last year, we singled out Boulder Bay and Stave Lake as centres that had a good record in consistently providing satisfactory meals. To that list, we add Twin Maples and Newhaven. Burnaby Youth Containment Centre has to be given full marks for its serious efforts to ensure that residents receive hot meals. In the year ahead, we may take a closer look at Corrections' practice with respect to vegetarian diets. Generally, this province's policy has been to furnish these on the basis of religious or medical need. But other provinces permit such meals on wider grounds and such allowance does not appear to have wreaked havoc with their meal service. Where specialized meal service is required, for example in the case of diabetics, the Corrections Branch may do well to consider the provision of such in advance when making contractual arrangments with suppliers.

Some facilities have recognized the need for residents to know what is happening with their resident welfare account. Residents pay into this fund from the wages they earn while at the institution. Proceeds go toward the purchase of recreational amenities the residents might not otherwise enjoy. But in too many cases, residents are in the dark about the stewardship of such funds. Common sense contends, "It's their money, they have a right to know what's happening with it." A monthly posting of this account, as some facilities now do, would help dispel a lot of uncertainty and, sometimes, downright resentment.

Inmate access to telephones remains a problem in some areas. This past year, our office conducted a limited study on inmate telephone usage. Study findings included the determination that there is no "right" as such to telephone use so long as residents are able to communicate in writing. However, the study also found that many inmates are much more comfortable with oral communication than with written correspondence. While the trend today seems to be toward a "free access" system for telephones and some instances of this are already in place and proving workable within the B.C. corrections system, the telephone equipment and facilities in some older institutions remain archaic and tie up a disproportionate amount of staff time. This becomes a source of added frustration for the resident who desparately wants to reach out to communicate with someone on the outside.

Other continuing problems that affect some facilities are the hidden policies or practices (such as circumstances under which certain long distance calls can be made) which leave a resident confused as to what he or she might expect from the institution. If everyone knows the rules of the game, then violations are less likely to occur. In some instances, the lack of administrative response to resident concerns continues to be a blot on what, in an overall sense, has to be regarded as a well-run system. Staff inconsistency in administering certain key policies continues to provide an unsettling institutional scenario for many clients of the correctional system.

In a few institutions, some inmates have expressed concern that if they talk to the Ombudsman, they will be labelled complainers and may even become targets for staff retribution. We hope this would not be the case. This problem might not be of such concern if each facility conscientiously strived to ensure that internal mechanisms for handling residents' concerns were in place and functioning appropriately. Facilities like Burnaby Youth Containment Centre, which conducts weekly rap sessions, Centre Creek with its "cabin meetings", the Forensic Psychiatric Institute with its patients' concerns committee, and many adult centres which encourage residents' committees are, we believe, most assuredly on the right track. We are heartened by the concern of some centre directors that work performed by residents should be meaningful and that the focus should be on the development of useful marketable skills to facilitate the movement of inmates back into the community. Such efforts usually mean additional work for correctional administration officers but they are clearly beneficial to residents.

As we continued our work with the province's custodial institutions and the people who operate them, we could not escape the feeling that this has been a trying year for those involved in this aspect of provincial administration. Staff morale, more specifically low staff morale, was evident this year to an extent we have not seen for quite some time. The possibility of privatization of certain youth correctional facilities; and the general milieu of anticipated profound change have left many institutional workers apprehensive about the future. The uncertainty is bound to be reflected in the way these workers approach their tasks. It is an issue toward which a good employer would want to display genuine sensitivity.

Issues Specific to Juvenile Facilities

"To smoke or not to smoke" has become the issue in some juvenile facilities this past year. Probably, the handwriting is on the wall for young puffers as the move toward total prohibition of tobacco products seems to be gaining momentum across the nation. Certainly from a health point of view, total prohibition is an approach with which it is difficult to argue. Still, we foresee some difficulties, particularly in those operations which let the staff light up while telling some of their sturdy 17-year-old wards that such an action for them is forbidden.

We have to be impressed with the efforts some staff have made with respect to their charges' welfare. The Outward Bound Program at Boulder Bay has provided several youths with a feeling of having accomplished something worthwhile that will inevitably have some impact on future behaviour. Staff volunteer much of their own time and effort at that camp to work on projects like the facility's bird sanctuary. We see merit in the thought that if release could be made to coincide with the completion of the Outward Bound Program, it would provide significant positive reinforcement for those who have completed the course. We commend Centre Creek for its focus on case management procedures which has resulted in a significant number of early releases being made possible.

New Directions

The past few months have seen the beginning of this office's contacts with those correctional operations which operate under contract to the provincial Attorney General. These include residential attendance programs, bail hostel programs and the like which involve an offender as a consequence of a court order. Because the operators of the program are responsible to the province, we take the position that they fall under the Ombudsman's jurisdiction. Most of the program operators we have met thus far have been pleased to discuss their activities with us and to learn what possible resource our office might be to them. It appears that such programs are being run on very tight budgets and we can appreciate the apprehension on the part of the contractor as budget renewal time rolls around each year. The comparatively lower salaries such facilities offer have been known to impact on staff morale and that cannot help but affect the residents these programs are seeking to help. We have observed at least one instance in which under-capitalization could prove to be a hindrance to a program which was able initially to obtain a good deal of its equipment at 10 cents on the dollar but which now must face full replacement cost as that equipment wears out.

A slide presentation developed by the Ombudsman's office was used extensively in 1987, offering the best value for the educational dollar. It has carried the message of the Ombudsman's role, history and institutional work to staff and residents in institutional facilities, students' community groups, etc. and has been extensively utilized in training sessions with security officers at the province's Justice Institute. We have appreciated the continuing involvement the Ombudsman's office has been able to have with security officers taking training at the Justice Institute. This affords us a unique opportunity to reach line staff and help them understand our role within the facilities where they work.

Man on probation threatened violence

A man contacted us when a probation officer apparently would not act to avoid violence threatened by a person on probation.

The former husband of this complainant's sister was on probation for assaulting her and under an order not to contact her, her child or our complainant and his family. However, he continued to do so. Notes were left on their cars, anonymous calls were received in the night, and mutual acquaintances had told them he planned to "do away" with his ex-wife. They were concerned because the man was suicidal, had carried out threats of violence in the past and now had threatened to "blow someone away."

The probation officer had been made aware of all of this but had not applied to 'breach' the order and bring the man into court. Such decisions are never easy: it may be that the threats are idle, or it may be that the breach will push the person over the edge into action. Nevertheless, this matter had to be dealt with. Delay had the potential for disaster.

With the cooperation of the ministry, the local police investigated the problem the same day we received the call. The man was arrested immediately and subsequently remanded for psychiatric assessment.(CS87-19)

Religious service made optional

Inmates at a medium security centre were required on frequent occasions to attend the first 10 minutes of religious services, after which they had the option of leaving. After receiving a complaint from an inmate, we discussed this matter with the acting director who agreed to make attendance at any future religious services strictly voluntary.(CS87-20)

Stamp of approval for overseas letters

Corrections Branch Rules and Regulations stipulate that all persons in provincial custody are entitled to send up to seven personal letters per week at the branch's expense. This is generally interpreted to mean mail within Canada.

At one correctional centre, a woman wrote regularly to her family overseas but to no one in Canada. For some time, she had been told she must pay her own postage. She felt the institution's policy was discriminatory.

We asked the centre to review its policy. The result was the introduction of a new practice whereby the institution would pay to mail personal letters to any destination, but the cost could not exceed a weekly total for mailing seven ordinary letters within Canada.

This appeared to eliminate apparent discrimination while remaining within the intent of the regulation.(CS87-21)

Inmate's dentures disappear

An inmate complained to the Ombudsman's office when a full set of dentures went missing from his cell.

The man told us that the institutional dentist had advised him to remove his ill-fitting full set of dentures for an hour or two whenever his gums became inflamed. The man was due to be released and there would be no time to arrange an appointment for adjustments to the teeth before his departure.

One Saturday evening, when his gums bothered him, the complainant left his teeth in his unlocked cell. They disappeared. At first, he thought a fellow inmate had played a practical joke. When his dentures failed to reappear, he obtained permission to search the garbage receptacles on the tier but to no avail. Unfortunately, prison staff did not conduct a search of nearby cells and there was little point in doing so many days later, after the complainant contacted the Ombudsman's office. If the teeth were taken as a malicious act by a fellow prisoner, the dentures would have been destroyed or thrown in the garbage elsewhere in the institution.

After investigating, we found no grounds for holding the institution responsible for his loss. We obtained a senior officer's assurance that he would assist the complainant in obtaining a soft diet for his remaining few days in the institution. We suggested that the complainant might request emergency assistance from the Ministry of Social Services and Housing upon release to enable him to replace the dentures. We also supplied the man with a list of dental clinics which provide service at low cost.(CS87-22)

Epileptic inmate concerned for safety

A resident in a correctional centre health care unit complained to us about having to climb stairs and be handcuffed to another resident while climbing the stairs in order to reach the area where he could visit with his wife. He believed that his epileptic condition made it dangerous for him to do this since the onset of a seizure would make him fall and hurt himself.

Staff believed that the complainant's epileptic condition should not preclude him from normal activities such as climbing stairs. We did not find fault with this decision. However, there did not appear to be a substantial need to handcuff the complainant while being escorted to the visiting area. Staff agreed to discontinue this practice.(CS87-23)

New 'pit stick' policy applied

A resident at a youth facility complained to us about a policy which did not permit residents to use what he referred to as "pit stick", also known as underarm deodorant. The resident asserted that, after a hard day of physical exertion, the sleeping quarters in the facility became pretty rank by anyone's standards.

Upon enquiry, we found that fear of residents eating the deodorant for its alcohol content was the rationale for this "non-application" policy. The Ombudsman's office decided to undertake a review of deodorant use practices at other youth facilities to determine how other centres dealt with this issue. We found that all other youth centres permitted, even encouraged, the use of deodorant by residents. We subsequently discovered that the "no pit stick" policy at the youth facility in question was changed shortly after we had received this complaint.(CS87-24)

Inmate wanted to wear necktie

We received a complaint that an individual at Vancouver Pretrial Service Centre (VPSC) wanted to wear a necktie when he appeared in court but was told that this was not allowed.

Upon investigation, we learned that for safety reasons, VPSC and the Sheriff's Department had an unwritten rule that individuals being transported to court are not permitted to wear neckties or have them in their possession. We asserted, however, that some form of compromise should be reached since the wearing of a tie is important for a person wanting to make the best impression before the court.

When the problem was identified to VPSC officials, they agreed that there was a need to wear a tie in court and that a compromise could be reached. The complaint was resolved when the centre agreed to draft a new written policy allowing an individual to wear a tie in court providing he put it on just prior to entering the court room. While the inmate is in transit to court or in the court holding cells, the tie would remain in the possession of the Sheriff.(CS87-25)

Lost belongings found

An inmate was taken in handcuffs from a community correctional centre to the segregation unit in the Lower Mainland Regional Correctional Centre

(LMRCC). He was then transferred to an open centre. His cell effects from the community centre were never forwarded to him and after waiting over a month for their arrival, he contacted the Ombudsman's office to help locate them. We found that his cell effects were sent to LMRCC after his transfer to the open centre. Since he was no longer listed as an inmate at LMRCC, staff simply stored his belongings in a storage room. We were able to find the missing effects and had them sent to the inmate.(CS87-26)

Hearing impaired phone visits made easier

An inmate from the Lower Mainland Regional Correctional Centre (LMRCC) complained to the Ombudsman's office that the phone visits were not a satisfactory way to visit his wife. Usually, the two phones separated by a pane of glass are acceptable for two individuals to carry on a conversation. However, in this case, the wife's hearing was impaired. Since the voice volume on the visiting phones was no louder than a regular phone and there was a problem of continuous background noise, it was virtually impossible for a person who is hearing-impaired to enjoy a visit.

We contacted the wife of the complainant. She was upset about being able to see her husband but not being able to hear his voice. She suggested that if an audio-controlled phone could be installed, her problem as well as that of anyone else facing this hurdle would be solved. We presented this suggestion to the director at LMRCC. He agreed that a volume-controlled phone would be an asset to the hearing-impaired and agreed to look into the matter. Four days later, he contacted our office to inform us that he had ordered an audio-controlled phone for the visiting area and that it would be installed in the next few days.(CS87-27)

Inmate given benefit of doubt, and wages

An inmate complained that he had not been paid for working as a cleaner at the Vancouver Pretrial Sentencing Centre (VPSC). The individual had since been transferred to the Lower Mainland Regional Correctional Centre (LMRCC) where he was having a difficult time contacting VPSC to obtain his wages. The complainant admitted that he had only worked a couple of days but, nevertheless, would like to get paid for them.

We found from the inmate's progress log that he did work while at VPSC. However, there was no record of the number of days that he had worked. The inmate's situation was explained to the business office at VPSC. Since the business office also had no record of the number of days worked and the inmate stated he had worked a couple of days, the manager of the business office agreed to give him the benefit of the doubt and pay him for three days of work. Subsequently, the standard wage for three days as a cleaner was deposited into the inmate's account at LMRCC.(CS87-28)

Remission notification procedure changed

Each month, a person who has been sentenced to a term in a correctional centre can earn up to 15 days of remission, or shortening of his time in custody, for good behaviour. If the centre's authorities assess an inmate's behaviour as only fair or unsatisfactory, they must inform him that he has not earned all his remission. He may then request a review of the basis for the remission deduction. These decisions directly affect the person's date of release from custody.

After receiving a federal sentence, an inmate at the Vancouver Pretrial Services Centre began earning remission even though he was held for a time at VPSC, a remand centre where remission is not normally an issue. The complainant claimed he had not been informed of his failure to earn remission and therefore, he could not seek a review as provided by the regulations.

We confirmed that he had not been provided clear information that he failed to earn 10 days. In fact, he did not learn of the assessment until he was transferred into federal custody.

The Corrections Branch reviewed this matter and revised the information given to the federal sentence administrator. The inmate received his 10 days.

In addition, the centre changed the policy on notifying inmates of remission awards. These changes enhance the application of the Charter of Rights and Freedoms which provides that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in the accordance with the principles of fundamental justice". Fundamental justice would require that persons are advised and able to appeal the assessment of remission which directly affects their liberty.(CS87-29)

Returned cheque told tale of jail

An inmate at a correctional centre complained that, by following routine procedure, the centre had inadvertently made known to her ex-husband that she was incarcerated, a fact she would have preferred to keep from him.

This is how it happened. A cheque sent to her home by the ex-husband for the maintenance of their child was re-addressed by Canada Post. Correctional centre staff check all incoming mail and, because the centre accepts only money orders for its residents, the cheque was returned with a form letter explaining centre policy. The woman learned of this later when she was given a copy of the letter and she subsequently complained to the Ombudsman's office.

We could not remedy the situation for the com-

plainant, but we were anxious that future, similar problems be avoided if possible. The institution shared our concern. In fact, a new procedure was already in place by the time we made enquiries. In future, residents will be notified when cheques are received. They will be given the choice of having the cheque returned to the sender or placed with their personal effects.(CS87-30)

Inmate sought counselling

A resident of a youth camp complained that his requests for inclusion in an alcohol counselling group had been ignored.

When we approached the camp director, he explained that the group's focus had moved away from alcohol abuse over the previous few months, and it no longer fit this resident's needs. However, the director proposed that he arrange for individual counselling for the resident through the Alcohol and Drug Commission. We considered this to be a reasonable solution to the problem.(CS87-31)

Arrangements made but too late

A forest camp resident learned that his mother who resided in Alberta was dying. Unfortunately, according to camp officials with whom he discussed the matter, the inmate did not meet the eligibility criteria for a temporary absence which would permit him to see his mother before she died.

We discussed the issue with these officials and although they were sympathetic, they did not believe that anything further might be done.

We contacted the Corrections Branch district director for this area and suddenly what seemed an insurmountable obstacle melted away. He had some discretionary powers to reconsider the problem. With his assistance, arrangements were made for the complainant to travel to Alberta to see his mother. Unfortunately, she died just shortly before he arrived. However, the resident was then able to make arrangements with the correctional centre to remain in Alberta for a sufficient time to be able to assist in and be present for his mother's funeral service.(CS87-34)

Inmate right on insulin injection

A resident of a large provincial corrections facility complained that, although he was diabetic, he was not receiving a proper diabetic diet. Furthermore, he was supposed to receive two insulin shots each day - one in the evening and one in the morning. The evening injection was being appropriately administered. However, the morning insulin was being given for injection after breakfast rather than before. The resident maintained this was not appropriate.

Once medical staff was alerted to the issue, the diabetic diet was provided immediately. However, medical staff saw no problem with the timing of the morning insulin injection.

We discussed the issue with a medical representative of the Canadian Diabetes Association who advised us that in order for a person to maintain satisfactory blood glucose levels throughout the day, it is vital the patient's insulin requirement, particularly the regular insulin, be given one half to one hour prior to a meal in order to match the body's glycemic response to the meal. Failure to do this, the representative said, could result in blood sugar levels being too high throughout much of the day. It is generally believed that extended periods with high blood sugar levels could damage the capillaries in the eye, leading to retinopathy and loss of vision, damage of the kidneys, leading to kidney disease, and neuropathy, leading to loss of feeling in the feet which could in turn precipitate amputation.

Armed with this information, we discussed the subject with the Corrections Branch director of health services. He expressed concern at the situation and immediately took steps to ensure that the complainant's morning injection was provided at an appropriate time.(CS87-35)

Inmate sought transfer

A visitor from Alberta was sentenced to a term in a B.C. forest camp facility when he was convicted of impaired driving in this province. However, he had learned that back in his northern Alberta community, social services workers were trying to take custody of his daughter and his wife had to appear at a custody hearing. He applied for an interprovincial transfer in order to attend the hearing and to be closer to his common-law wife and their daughter. When the wheels which processed the transfer did not appear to be turning quickly enough, the resident sought the assistance of the Ombudsman.

We ascertained the status of the transfer application and were satisfied that matters were proceeding as well as could be expected. There were a number of authorities in the two provinces who had to be involved before approval could be given.

In discussing the issue with social service workers in Alberta, we learned that the complainant did not have custody rights where the child was concerned and that his involvement in the upcoming hearing was by no means considered essential.

The resident then admitted that he would probably not have been attending the hearing even if he had been transferred. However, he suggested that his presence in Alberta would assist his spouse in continuing the alcohol and drug rehabilitation program she required and would also provide support for her to meet all the requirements of the legal system. In

this way, she might stand a better chance of retaining custody of their child. We were able to assure him that she had attended every hearing to date and thus far had satisfied every legal requirement. It was conceded, however, that his closer presence might be a form of support to her following whatever decision the upcoming hearing might render. Thus, with the cooperation of the Corrections Branch, the complainant was transferred to Alberta within a few days after the hearing took place.(CS87-36)

Payment for glasses clarified

Threading needles was becoming more difficult for a woman who worked in the sewing shop of a correctional centre. An optometrist confirmed that her current optical prescription was out of date and wrote her a new one. One of the nursing staff of the centre told the woman she would have to pay the entire cost of the new lenses in advance of their being made.

However, the decision was not the nurse's to make. When asked to review the matter, the deputy director took into account that the resident needed new lenses in order to do her work properly and that her own funds were quite limited. Payment of a portion of the total cost, to be made in two instalments, was authorized. (CS87-37)

Natural justice skirted

A resident from a regional correctional centre was permitted to transfer to a community setting. No sooner had he become comfortable in the community correctional centre than he was transferred back to the more secure main centre.

The reasons given included reference to the complainant's previous mental state, his current offence and his previous behaviour, all issues that were fully known before his transfer to the community facility. To this man, the reasons did not make sense. When we investigated, however, we found officials had considered another reason not revealed to the inmate. New information had come to corrections officials from an outside police force which precipitated a re-evaluation of the complainant's suitability for the less secure setting.

We questioned whether the Corrections Branch had observed the requirements of natural justice in its handling of this situation. When a prisoner's classification is changed, Canadian jurisprudence requires that he be afforded the opportunity of defending himself and making representations on his own behalf. With the information provided to him, we doubted the complainant was in a position to do so.

The branch was concerned with protecting the identity of the source of the new information. We believed such confidentiality could have been preserved while giving the complainant a better understanding of why things were happening to him the way they were.

After much discussion with the Corrections Branch, the regional director indicated he was willing to meet with the complainant to provide a more specific explanation of the transfer. However, at this point, the complainant chose not to avail himself of this offer and the case was concluded.

Two other issues arose during the course of this investigation. We found the Corrections Branch to be reluctant to release a copy of the new police information to the Ombudsman's office. We suggested to the branch that, according to section 15 of the Ombudsman Act, it could not withhold such a document. The issue was not pressed, however, once the case was resolved.

The other issue had to do with the branch's maintenance of confidential information. It was discovered that the new police information was being kept on a file at a different location from the resident's main file. We suggested that other corrections officers who might benefit from the added information would not be aware it existed. The Corrections Branch subsequently undertook to resolve this logistical problem.(CS87-38)

Privacy at doctors sought

A forest camp resident complained that a Corrections officer was always inside the room whenever he saw the prison doctor for medical examination. The complainant claimed that he and other residents found this highly embarrassing whenever they had to discuss personal physical problems. They were not happy that staff would be aware of certain conditions from which they might suffer.

When this issue was brought to the attention of the district director, he quickly issued a memo stating that, except where security or escape were concerns, staff escorting residents for medical examinations either at the camp or off-site should allow for private consultations between the physician and patient. Staff henceforth would not normally be present in the examining room or within normal hearing distance of medical interviews, providing the maximum privacy possible for residents. With the district director's cooperation, a needless infringement on privacy was avoided.(CS87-39)

Service charge bites into cheque

When a resident at a regional correctional centre sold some hobby work and received a personal cheque for $40, he requested that the cheque be deposited to his inmate trust account. Following standard practice to avoid NSF cheques, the institution asked the bank to collect the money for the cheque, a procedure involving more than just allow-

ing it to clear the cheque writer's bank, before the funds would be posted to the inmate's trust account. The bank complied and charged $10 for the service. This charge was passed on and deducted from the inmate's account within the Corrections Branch. The inmate complained to us that the charge was excessive.

In making enquiries about the charges, we found an alternative procedure which would safeguard the correctional centre against possible loss where an inmate might withdraw money from his trust account on the strength of a cheque that later turned out to be NSF and which would also avoid the collection procedure charge of the bank. We suggested that the funds be withheld from the inmate's correctional facility trust account until the cheque is processed by the bank. If it was discovered to be NSF, the bank would charge $3.50, to be taken from the resident's trust account. Cheques that cleared the bank would be deposited without charge to the inmate's account. This procedure was acceptable to all three participants: the bank, the institution, and the resident. Unfortunately, the inmate who initiated the complaint could not be reimbursed for charges which had already been levied against him.(CS87-41)

Lawyer needs ID for visit

An out-of-town lawyer visited the Kamloops Regional Correctional Centre and identified himself to the authorities by means of a driver's licence. The officer in charge allowed a visit but it was restricted by a glass partition between the lawyer and his client. The following Sunday, the lawyer again requested a visit after 6:30 p.m. but was denied access. The inmate complained about both incidents to the Ombudsman's office.

On investigation, we found that the officer had restricted the first visit because he was not provided adequate identification by the lawyer. On the second request, the visit was denied because the officers normally available to escort visitors to the visiting area and supervise were already engaged in supervising recreational programs for other residents.

We suggested, to both the lawyer and the institution, methods by which the lawyer's identity could have been confirmed, such as use of the Law Society membership card or reviewing previous contact records. We also discussed with the Law Society several improvements which could be made to the Law Society membership cards. The institution was prepared to move the resident to facilitate future visits with the lawyer but no more visits were needed. The lawyer was successful in obtaining a court adjournment to allow time to discuss a crucial part of the accused's defence at the court house. Additional investigation was not necessary.(CS87-42)

A matter of a good night's sleep

A resident of a secure correctional facility complained that his prison cell bed was uncomfortable. He found the slats of the bed springs were bent and too wide apart. He had had numerous operations on his back and the bed was causing a lot of discomfort. The medical officer would not approve a supporting board to go under the mattress for reasons of security.

After the resident contacted our office, we referred him to the director of security of this facility. The director agreed that a wooden board could be placed under the mattress and the complaint was resolved.(CS87-43)

Diversion procedure a concern

The Ombudsman's office received a call from an individual who had been contacted by the Victoria Community Diversion Project. Diversion is a pre-trial procedure for those accused of an offence. If there is sufficient evidence to support a prima facie case against an accused, instead of proceeding to trial, Crown counsel has the option of diverting the accused from court proceedings to a diversion agency, where the person undertakes by agreement to accept personal responsibility for the alleged offence. Participation in a diversion program is voluntary and if a diversion agreement is reached, the Crown relinquishes its rights to prosecute the accused for the offence, regardless of whether or not the conditions of the agreement are met.

In Victoria, the Community Diversion Project is a private body on contract with the Corrections Branch of the Ministry of Attorney General. The person who contacted us was uncomfortable about an outside agency having access to his file and he was concerned this agency had contacted him before Crown counsel had notified him that a charge was pending.

On the question of confidentiality, we informed this individual that the diversion project, though on contract with the ministry, operates under the same constraints of confidentiality and policy as an agency within the ministry. Due to the contractual relationship, they were virtually the same body.

On the question of informing him of the pending charge, the Crown does not contact the individual first because there is a concern that people may regard the proposal as an implied threat, i.e. "we'll lay charges if you don't accept this proposal." It is believed that the diversion project personnel can best explain their role so that people do not feel coerced by the criminal justice system.

The complainant chose not to enter the diversion process as he wanted a trial on the matter. (CS87-44)

Centre admits responsibility

A resident of a youth camp complained that some of his clothing had gone missing and his stereo had been damaged after his personal effects were left in storage at another youth facility. The resident had written a letter to the director of the youth facility but he had not yet heard a response.

We discussed this matter with the director who initially did not accept responsibility for either the lost personal effects or the damage to the stereo. After some prompting by our investigator, the director investigated the matter and found that the youth facility was, in fact, responsible for both the lost personal effects and the stereo damage. The director then wrote a letter to the resident, indicating acceptance of responsibility for the articles and intent to reimburse the youth for them.(CS87-45)

Old facilities 'hot and stuffy'

Much of B.C.'s prison population is housed in facilities built 50 to 80 years ago. The system cannot allow old or inconvenient physical plant to compromise basic rights. These facilities do often impose limitations on programs, privileges and comfort levels.

We received a complaint from a woman who had been placed in the segregation unit of a correctional centre. This was punishment for a serious infraction of the institutional rules. She complained, not about the fact she was being punished, but about what she described as the oppressively hot and stuffy atmosphere in her locked cell.

Knowing that the woman must spend up to 23 hours a day in the cell during the term of her punishment, an Ombudsman investigator went to the unit and spent some time in a closed cell. She found that, while a very small window seemed to allow in enough fresh air to keep the oxygen at an acceptable level, the small room was indeed uncomfortably hot.

The tiny window was an obvious limitation. But the building's heating system was old and to lower the heat in this basement area would result in the units on other floors being too cold. It would have been impractical for us to suggest major renovations to the windows and heating system, especially since the facility was to be replaced within three years.

Our discussion with senior staff resulted in new orders being given. When all inmates were locked in their cells, staff would be permitted to open two outside doors at intervals to create a crossdraft. Each cell had two locked doors - an outer, solid door and an inner door of bars. Outer cell doors would be opened periodically on a rotating basis. This would improve the air circulation and cool the cells while maintaining the isolation of prisoners from one another, which is one of the purposes of a segregation area.

We considered the orders to be as close to a real resolution as it was possible to achieve.(CS87-46)

A little light in the right spot

A forest camp resident complained that his hut was the only one in the camp that did not have individual light plugs for reading lamps. The complainant claimed that there were only two overhead lights in his hut, and they disturbed those trying to sleep when they were turned on for those who wished to read.

When this issue was brought to the attention of the local director, he quickly issued a memo to B.C. Building Corporation stating that he supported the request for the installation of individual light plugs and looked forward to its implementation. (CS87-47)

Ministry of Education

As in past years, we have enjoyed a high level of cooperation from Ministry of Education staff. Many of the calls we receive involve problems with schools and school boards. While these are not within the jurisdiction of the Ombudsman, in many instances we are able to reach a resolution for the complainant through the assistance of the ministry and the cooperation of the local school or school board.

Resolved:	4
Not resolved:	-
Abandoned, withdrawn, nonjur:	1
Not substantiated	7
Declined, discontinued	4
Inquiries	6
Total number of cases closed	22
Number of cases open December 31, 1987	5

Access to French program denied

We received a call from a family whose child had been refused entry into the Program Cadre, an education program in French for students of French parentage, even though the school had confirmed that there were spaces for eligible students available. The family had lived overseas and the child had been in a school that was predominantly French. The family called our office to see if we or the Ministry of Education could assist them.

Section 23 of the Charter of Rights and Freedoms confers the right to be educated in a program where French or English is the primary language. However, this right is extended to a linguistic minority, not the linguistic majority. Thus, children whose parents were educated in French but now live in a predominantly English-speaking area are entitled, under the charter and where numbers warrant, to be educated in the language of their parents. The same holds true for English-speaking parents in French areas. The Ministry of Education's reponsibility is to ensure that these schools are available where the numbers warrant it. The criteria of the numbers warranted is not fixed under the Charter but rather left to ministry policy.

The Ministry of Education has no direct authority to instruct Program Cadre schools to accept a particular student. These particular parents were educated in English, not the linguistic minority in British Columbia. Therefore, the child did not meet the requirements of the charter to attend the Program Cadre, but could attend a French Immersion Program. The parents were satisfied that the ministry contacted the Program Cadre to see if an exception could be made, even though it was denied. (CS87-49)

Ministry of Energy, Mines and Petroleum Resources

As in previous years, we received very few complaints concerning this ministry in 1987. Most of the complaints concern mineral tenure and our office enjoys a good working relationship with the staff of the Mineral Titles Branch.

Bill 66, the *Mineral Tenure Act*, received first reading in December 1987. This Act consolidates the law relating to mineral tenures and provides statutory remedies to deal with complaints.

Resolved:	1
Not resolved:	-
Abandoned, withdrawn, nonjur:	2
Not substantiated	3
Declined, discontinued	2
Inquiries	-
Total number of cases closed	8
Number of cases open December 31, 1987	4

Bank pursued for bond

A couple owned a 48-acre piece of property. Before they had purchased it, some placer mining had taken place on the property. In accordance with the *Mining (Placer) Act*, the placer lessee had posted $8,000 as security. The $8,000 had been placed in a term deposit at a local bank.

When the couple purchased the property, there was a 8- to 10-acre hole in it as a result of the placer mining operations. One of the conditions of sale was that the ministry would reclaim the hole by filling it in. The ministry requested the $8,000 from the local bank to fund this reclamation but the bank responded that, because the bond receipt and agreement form had not been signed by the placer lessee, it was not a valid document. The bank, therefore, declined to remit the $8,000 bond.

When the reclamation work continued to be left undone, the woman contacted our office for assistance. She felt the ministry was not pursuing the bank as diligently as it might. What was the point, she asked, of requiring a placer lessee to post a bond if the ministry could not retrieve it?

An Ombudsman officer contacted staff in the ministry's Engineering and Inspection Branch. A number of letters demanding the bond had been sent to the bank, but it had not replied. The particular branch had since closed and it was unclear where this file had been sent. The Ombudsman officer contacted the bank's headquarters in Vancouver to identify the branch now handling this file. The ministry then directed its correspondence to the manager of this bank who agreed that the bank was responsible for the $8,000 bond. When we closed this file as resolved, advertisements in the local paper were inviting bids for the reclamation work. (CS87-50)

Ministry of Environment and Parks

This ministry's mandate is to help maintain an optimum quality environment through the management and protection of the land, water, air and living resources of the province. Ministry staff have generally been helpful and prompt in their response to complaints involving the ministry's programs of fish and wildlife management and air, water and waste management.

Pesticide Control Program

The Pesticide Control Program issues permits for pesticide use on public lands and water bodies in British Columbia. Before a pesticide use permit can be issued, the administrator of the *Pesticide Control Act* must be satisfied that use of a pesticide, whether it is a herbicide, insecticide, fungicide and rodenticide, will not cause an unreasonable, adverse effect on humans or the environment. The Act provides that any person may appeal a decision of the administrator to the Environmental Appeal Board. In 1987, more than 650 pesticide use permits were granted.

Over the years, the Ombudsman has received many complaints from individuals and groups concerned about the use of pesticides. These complaints have ranged from lack of opportunity to give relevant information to the administrator before he makes a decision about a permit, to frustration with the procedures of the Environmental Appeal Board. In 1987, the Ombudsman began a comprehensive review of pesticide regulation by the Pesticide Control Program and the Environmental Appeal Board. A public report of our study and our recommendations was published in March 1988.

Resolved:	13
Not resolved:	-
Abandoned, withdrawn, nonjur:	10
Not substantiated	26
Declined, discontinued	16
Inquiries	5
Total number of cases closed	70
Number of cases open December 31, 1987	50

'Statutory employees' practice unfair

The *Public Service Labour Relations Act* is the statute that regulates labour relations for public servants. According to the statute, persons who are employed by the Public Service for less than 60 days cannot join the union. Predictably, the Public Service now has a category of employees referred to as 'statutory employees', i.e. persons hired for less than 60 days and not in the union. These people are not eligible for any of the benefits enjoyed by other public servants: they do not have dental or extended medical coverage; the employer does not provide a pension plan for them; they do not get paid when they are sick, and their vacation pay is lower than that paid to auxiliary or regular public servants.

In addition to that, the Ministry of Environment and Parks had a policy requiring an interval of at least six months before a statutory employee could be rehired for a second term. In other words, these employees were employed for a maximum of 59 days every eight months, never worked long enough to qualify for unemployment insurance benefits and, most importantly, never really got a chance to prove their worth to the ministry.

We felt that the ministry's practice was unfair. We also thought that the practice contravened the provisions of the *Public Service Act* which requires that appointments to the Public Service are based on considerations of merit; absence from the Public Service for at least six months, in our opinion, had nothing to do with merit.

After some discussion, the ministry agreed to change its policy. There is no longer a requirement for an interval of six months between appointments. Appointments are now to be based on the merit principle, as required by law.(CS87-51)

Property access granted through park

A family's land had been afforded access across adjacent private property but access was denied by a new owner. The land's own registered access was undeveloped, due in part to rock which would be expensive to remove. The family sought new access to its property via an old logging road through a park. The park had been, until recently, privately owned. It was donated to the province and the former owners, who still lived nearby, had no objection to this family using the road. Still, the Ministry of Environment and Parks refused to allow access through the park. The family, now without any viable access, complained to the Ombudsman's office.

The ministry's policy is to preserve parks carefully. A full study dealing with park use and where any roads may be constructed had not be completed for this recent acquisition. Reluctance to allow use of this logging road was understandable.

Our investigation confirmed that, while the legal access could be developed, construction would seriously scar the natural scenery and possibly impede a small waterway near the foot of a rock precipice. Allowing use of the logging road under strict conditions to be set by the ministry would have minimal effect on the natural beauty, would accommodate the family's needs and allow time for the full evaluation of the park's development. After discussion with the ministry, approval was given, with conditions on use of the road.(CS87-52)

Ministry of Finance and Corporate Relations

As in previous years, the Ministry of Finance and Corporate Relations has continued to be courteous and cooperative in its relations with this office. The majority of complaints against this ministry concern tax: sales tax administered by the *Social Service Tax Act* and property tax in areas outside municipalities and regional districts administered by the *Taxation (Rural Area) Act*. Discussion and explanation of an individual's situation are often the key ingredients in the resolution of complaints.

Resolved:	13
Not resolved:	-
Abandoned, withdrawn, nonjur:	9
Not substantiated	25
Declined, discontinued	11
Inquiries	14
Total number of cases closed	72
Number of cases open December 31, 1987	91

Travel trailer vs. mobile home

A woman purchased a travel trailer in 1984 and used it as her residence in a mobile home park. She registered it as a mobile home. In 1987, the unit was offered for sale and a potential purchaser found the unit was still registered with the Motor Vehicle Department as a travel trailer in the name of the original owner.

The Ministry of Finance and Corporate Relations claimed sales tax was due on the 1984 transaction. The complainant opposed the claim on the grounds the unit was a residence. She subsequently complained to the Ombudsman's office.

Our assessment of the facts confirmed the ministry's position and when we explained it, the complainant agreed. Because of the possibility that this woman had been misinformed by a government employee in an earlier enquiry, the ministry offered to waive the interest that had built up since 1984 on the

understanding that the actual amount of the outstanding sales tax would be paid when the unit was sold.(CS87-53)

Tax refunded on lost sale

A senior citizen, anticipating summer guests, ordered some custom-made furniture with a local merchant and, to simplify her summer plans and activities, chose to make payment in full when placing the order. Three days later, the company declared bankruptcy.

During subsequent creditors meetings with the appointed receiver in bankruptcy, this woman drew the conclusion that the provincial social service tax paid on the furniture was lost forever. She had not contacted the ministry but complained to the Ombudsman's office that it was unfair that the social service tax was not refunded when the furniture manufacturer declared bankruptcy before the furniture was made.

We approached the ministry's Consumer Taxation Branch on this woman's behalf. Discussion centered on the role of the merchant acting as an agent on behalf of the ministry to collect and remit tax. The ministry reviewed the complaint and ruled that no sale had taken place since the goods had not been manufactured yet. It therefore refunded the sales tax to a very grateful citizen.(CS87-54)

Computer couldn't wait

A man contacted the Ombudsman's office upset about receiving notification of overdue property taxes with the appropriate penalty added. Taxes should have been paid through an arrangement with his bank in monthly principal, interest and tax (PIT) payments.

Our review of the matter indicated that the computer had automatically printed the non-payment penalty statement before the staff had had an opportunity to tell the computer that it had been paid. Shortage of staff and summer vacations were faulted. We advised the complainant that he could ignore the computer notice, for this time at least. (CS87-55)

Ownership dispute created tax problem

An elderly widow was experiencing both family and economic difficulties. She continued to reside in her home in an urban area but annual property taxes had become very high and she was not able to pay them from her pension income.

The *Land Tax Deferment Act* provides that people 65 or over, widows, widowers or handicapped as defined by the *G.A.I.N. Act* may apply to defer payment of their property taxes. The woman applied but, unfortunately, a legal disagreement had arisen over the ownership of her home at the time she was widowed, and a lis pendens had been filed at the Land Title Office. A lis pendens is a document that indicates title to a property is being disputed. In this case, it indicated that one half of the property was in dispute. For this reason, her application was denied. She contacted the Ombudsman's office for help.

The Ministry of Finance and Corporate Affairs must be sure that the owner has sufficient equity to pay off any tax lien created by the deferment. However, the widow's undisputed half ownership of the property was more than sufficient equity to satisfy any tax lien caused by deferment. When we made this point to ministry staff, her application to defer taxes on the basis of her interest in the property was approved, granting her considerable economic relief. (CS87-56)

Sales tax on property repossessed?

This is the first year of operation for the property purchase tax that is payable by the purchaser of land upon registration of a conveyance in the Land Title Office. The tax is one per cent of the fair market value up to $200,000, increasing for higher value transactions.

A man had sold his residence in February 1987 before the tax was introduced and agreed to carry the mortgage for the purchasers. Several months later, the purchasers fell in arrears of payment and reneged altogether on the mortgage agreement. The vendor believed that in addition to this piece of bad luck, he would be liable to pay the property purchase tax when he registered the property back in his own name, since that is the point at which purchasers are normally required to pay the tax.

We contacted the administrator of the *Property Purchase Tax Act* and it was his opinion that the vendor would qualify for an exemption from the one per cent tax. An exemption can be claimed on the property at a Land Title Office. The administrator also pointed out that it is possible to write to the Ministry of Finance and Corporate Relations to get an advance ruling on whether property purchase tax is payable in any transaction.(CS87-57)

Ministry of Forests and Lands

Two former ministries, the Ministry of Forests and the 'lands' section of the Ministry of Lands, Parks and Housing, were amalgamated to create the Ministry of Forests and Lands. Its mandate is the management and allocation of all Crown lands and the forest resources on Crown lands. The major portion of Ombudsman's investigators' work in resolving complaints is done through the eight regional Lands offices and 46 district Forest offices.

Resolved:	30
Not resolved:	-
Abandoned, withdrawn, nonjur:	7
Not substantiated	28
Declined, discontinued	12
Inquiries	3
Total number of cases closed	80
Number of cases open December 31, 1987	40

A trespass on the beach

The Ombudsman's office was requested by the Minister of Forests and Lands to investigate a matter involving his ministry, the Municipality of Saanich and a private property owner who also happened to be a deputy minister in another ministry.

When the property owners purchased their home, it was fully developed. Its eastern boundary protruded beyond the high water mark and onto a public beach - a clear trespass. Because the beach was vulnerable to erosion by wave action, the property owners attempted to stabilize rocks on the property's outer edge in the trespass area, by having them cemented. This made the area unsightly and, with waves undercutting the rocks, posed a potential danger. Public concern arose over a ministry proposal to legalize the trespass by transferring the trespass area to the property owners. It was interpreted by some to be preferential treatment for someone holding senior public office.

Our investigation traced this matter back to approximately 1968, when the original property owner secured a development permit from the municipality. Correspondence at the time, though incomplete, documented concern that the owner was building too close to the high water mark. It appeared the house was built without the municipality requiring the necessary setback distance from the high water mark. Over time, the lawn had been extended, a property-protecting wall built and rock placed seaward of the wall.

Three years before the current owners bought the property, when the ministry learned of this and other trespasses beyond the high water mark in the same area, legal action was started against one of the other properties. The court ruled in that case that the trespass be legalized. It was that court ruling that the ministry used as a precedent to offer legalization of the property now in question. On the basis of that offer, the owners proceeded to have the rock outside the wall stabilized.

Our investigation revealed one major difference in the two cases: the first involved a steep and high clay bank at the extreme end of the beach where legalizing a trespass was reasonable as protection; the other was at sea level in a high public usage area where such protection was far less important.

In making our recommendation, we took into consideration that:

1) the municipality had failed to enforce the setback bylaw of the day when the property was first developed;
2) the current property owners had not extended the property but had in good faith incurred construction and legal expenses on the initial offer by the ministry to legalize their land;
3) the ministry used a previous court decision as the basis to make the offer to legalize the matter and while a legal precedent would normally be upheld, the topography of the two properties was different.

Therefore, we recommended that:

a) the area of the property in trespass be removed from the title and a new engineer-designed sea wall be constructed on the high water mark, with the cost to be shared equally by the municipality and the ministry.
b) the construction and legal expenses already paid by the homeowners, on the expectation legalization would take place, be absorbed by the homeowners without redress to compensation.

This case is typical of the increasing cooperation extended to the Ombudsman's investigations by all levels of administration, including municipalities, even when the Ombudsman is without legislated authority. This can be summed up with the phrase "striving to be fair in the overriding public interest." The Ombudsman's recommendation was accepted in this case by all interested parties. (CS87-58)

Concerns about rowdiness

The Ministry of Forests and Lands proposed to develop a recreation trail and site on Crown land. Both the Crown land and adjacent private land bordered one of the few lakes in the area. The lake had been stocked with fish in 1984 and since that time, its use had increased.

Many of the users crossed the private property to get to the lake. The property owner contacted the

Ombudsman's office to object to the development of the recreation site because he felt it would result in more littering and vandalism of his property. Both he and the regional district were concerned about inadequate access.

An Ombudsman officer contacted the manager of the district office to discuss the complainant's concerns. She was told that the Ministry of Transportation and Highways allotted the Ministry of Forests and Lands $36,000 to upgrade the forest road which provides the main access to the lake. The smaller road from the forest road into the lake would also be improved somewhat. Potholes would be filled and some curves widened.

This improvement of road access satisfied the concerns of the regional district. The local RCMP was contacted and its assessment was that rowdiness was not likely to be a serious problem because of the relative remoteness of the area.

The complainant remained apprehensive about the possible impact on his property. However, our investigation revealed that the ministry had given due consideration to all concerns brought to its attention. Apprehension of a potential negative effect was not sufficient reason to deny the many valid users access to the lake. (CS87-59)

Cheque acceptance policy altered

The personnel manager of a credit union contacted the Ombudsman's office with a complaint about a policy of the Forestry Division of the Ministry of Forests and Lands.

The ministry's stand-tending (tending a new stand of trees to increase the survival rate) contract form required enclosure as bid deposit a certified cheque or money order in the amount of $100.

The credit union issued its own official cheque rather than a certified cheque because a certified cheque does not give the holder any assurance that the cheque will be honoured by the drawer bank. The credit union's certified cheque is an instrument drawn on its own account as a financial institution and is therefore a guaranteed instrument for payment.

One of the credit union's customers submitted a bid to the ministry for a stand-tending contract. Enclosed as deposit was an official cheque issued by the credit union. This customer lost the contract because the cheque submitted was not certified. The credit union felt aggrieved by the ministry's policy not to accept its official cheque. Conceivably, certain of its customers might choose to deal with another financial institution because of the ministry's policy.

As a result of this incident, the ministry agreed to change its policy and, in future, accept the credit union's official cheque as a guaranteed instrument for payment. (CS87-60)

Band concerned about logging

The Ministry of Forests and Lands approved logging plans by the tree farm licensee of an area. The Ombudsman's office was subsequently contacted by the representative of a Native band council which was concerned that logging operations and road construction would damage fish and wildlife habitats. The band council was also anxious to preserve certain heritage sites.

The council wanted the ministry to implement an Integrated Resource Management Plan (IRMP) in this watershed area. An IRMP is a detailed study to prepare the basic outline for integrated long-range resource management. It is an attempt to ensure rational and desirable forest development in keeping with social needs and environmental considerations. The ministry's district manager did not dispute the benefits which might be derived from such a plan. However, he maintained that the ministry had neither the financial nor the personnel resources to conduct such a study.

We discussed the band's concerns with the district manager. In an effort to address band concerns, he proposed an informal planning team, of which the band council would be a member, to develop a local resource use plan. The complainant was satisfied with this resolution and the file was closed. (CS87-61)

Lease conditions stay in place

Before the Lands Branch issues a lease for occupation of Crown land, it refers the application to other authorities for comments.

In one case, the Fish and Wildlife Branch objected to the issuance of a lease with an option to purchase because of its concerns about moose habitat. Consequently, in 1979, the Lands Branch issued an agricultural lease with an accompanying management plan to the individual. In addition to other points, the management plan restricted logging on the leased lands because of the moose habitat.

This particular lease was assigned to another couple in 1981. In response to persistent requests from the new lessee, the Fish and Wildlife Branch had agreed to allow selective logging on a portion of the leased land in 1984. However, in 1987, the branch's position was that further timber harvesting would encroach on the moose habitat. It was therefore not willing to agree to additional logging. The couple subsequently complained to the Ombudsman's office that the ministry was treating them unfairly by refusing them permission to log any more of the Crown land held under lease.

When the complainants assumed the lease from the previous lessee, it was their responsibility to inform themselves of the terms and conditions of the lease. The ministry's responsibility was limited to en-

suring that the new lessee met certain specified criteria (e.g. citizenship). The ministry's district manager was willing to meet with the complainants to discuss the conditions of the lease in greater detail if they wished. Our file was closed as not substantiated because the ministry had relevant reasons for refusing to allow further logging on the leased Crown Land.(CS87-62)

Foreshore use disputed, rectified

In October of 1986, the Ombudsman's office received a complaint from a resident of Sechelt concerning the ministry's lack of supervision of a lessee who held a foreshore lease in front of the complainant's property.

The 10-year lease was first issued in 1971 to a person who was subdividing land overlooking the foreshore area where the complainant now lived. The intent was to offer moorage to property owners in the subdivision. The lease was for boat launching, moorage and breakwater purposes. In 1979, the lease was assigned to the current holders and managed by an agent of theirs.

In 1981, the lease was renewed for a further 10-year period. The use was now described as "for private boat moorage and breakwater purposes". Sometime before 1985, the leased area had been developed and used for herring retention ponding and this resulted in a great increase in both marine and road traffic. The leased area became messy, unsightly (the lessee had erected a chain link fence), and noisy (caused by excavation, generators and renovation of a barge on-site).

In March 1985, the Village of Sechelt sent the ministry pictures of the leased area and pointed out that the current uses were not authorized by the lease. Several months later, the lessee proposed to the ministry amendments to the purpose of the lease and extension of the leased area.

Over the next several months, discussions concerning lease use took place between ministry staff and the lessee. The zoning of the leased area was also being reviewed by the Village of Sechelt council. In June 1986, in response to a telephone call from one of the residents (soon to be the complainant), a ministry staff member met with her and her neighbours, the lessee's agent and his lawyer, the administrator and the Mayor of Sechelt.

The complainant, dissatisfied with the ministry's failure to require adherence to the usage permitted by the lease, contacted our office. An Ombudsman officer contacted the regional lands office to discuss the complaint and the ministry began to exercise greater diligence in ensuring that lessees cease unauthorized uses. In December 1986, the ministry wrote the lessee notifying him that he had 60 days to cease all uses not authorized by the lease. This letter was followed by another specifying to the lessee exactly what the ministry required him to do.

In February 1987, two Ombudsman officers met with ministry staff to discuss the situation further and then went to Sechelt to view the site, meet with the complainant, other residents and the agent of the lease holders.

The lease site was returned to a state satisfactory to the ministry. The agent of the lessees decided against proceeding with his rezoning application. The ministry proposed to revise the lease document to allow for rental of moorage space to recreational boaters subject to several restrictions. The lessee secured a letter of commitment from the ministry for a foreshore lease at another site where herring ponding would be permitted.

At this point, we closed our file as resolved as it appeared the complainant's concerns had been addressed. The District of Sechelt was negotiating with the lessees to assume the foreshore lease as part of an exchange of properties with the lease holders. Residents of the subdivision had formed an association under the *Society Act* with the aim of subleasing the foreshore lease from the District of Sechelt.(CS87-63)

What are neighbours for?

After comparing his stumpage rate with that of another licensee in the same area for the same species, a man contacted the Ombudsman's office because he believed his stumpage charges were too high.

After an Ombudsman officer contacted the regional office, ministry staff there discovered that an error had been made on the other licensee's stumpage rate. The complainant was not being overcharged; rather, the adjacent licensee was being undercharged.

The ministry indicated that future stumpage calculations would be corrected. We closed our file as not substantiated because there had been no error in the stumpage charged to the complainant.(CS87-64)

Ministry of Health

There was a significant decrease in the number of complaints received concerning the Ministry of Health in 1987, to just under 300 from more than 500 in 1986.

The ministry provides a wide range of health and related services to hundreds of thousands of British Columbians each year in the areas of medical and hospital coverage, home care, public health inspection, mental health services, emergency response and vital statistics, to name only a few.

The ministry maintains a high standard of technical requirements in the area of human and industrial waste, designed to ensure public health. Sometimes, experience and technical developments, not fully explained and understood by laypersons, can be interpreted as overly restrictive and lead to complaints.

In our investigation of the complaints received, we found ministry staff at all levels to be cooperative and concerned that the public receive the best service possible. Ministry staff in the Medical Services Plan, the Emergency Health Services Branch and the Continuing Care Division were particularly helpful in responding quickly to problems brought forward by our office.

In many investigations, however, it became obvious to us that if there had been adequate public information available to begin with, a problem may not have developed. For example, in many cases involving the Medical Services Plan, the complainants appeared to have little information about eligibility requirements for medical coverage and often no information about what was or was not covered under the Plan. In many cases, problems arose when subscribers either required or had already obtained medical services outside of B.C., either in an emergency situation or because they lived in border communities. Out-of-province benefits are the subject of a new ministry pamphlet to be distributed in the spring of 1988.

Much of our attention in 1987 was focused on the administration of the system set up to grant billing numbers to new physicians. This system is administered by the Medical Services Commission, operating under the rules specified by the *Medical Services Act* and Regulations. During 1987, we received complaints from a number of young, qualified physicians who had been unable to receive a practitioner number which would allow them to bill the Medical Services Plan for services provided to their patients. These physicians, generally from the Vancouver-/Burnaby area, felt that the commission may have improperly discriminated in favour of physicians who had purchased a practice from a retiring physician and against physicians who were attempting to establish a new practice. During 1987, we completed a comprehensive study of the Commission's system for granting practitioner billing numbers in the Vancouver/Burnaby area, which has been published as Public Report No. 9. In it, we made a number of recommendations concerning improvements in administrative fairness in the billing number system, and the commission has agreed to implement many of these recommendations.

Resolved:	117
Not resolved:	-
Abandoned, withdrawn, nonjur:	29
Not substantiated	64
Declined, discontinued	32
Inquiries	38
Total number of cases closed	280
Number of cases open December 31, 1987	118

Watch medical coverage outside B.C.

While a woman was living in another province on a temporary basis, she required chiropractic services. Believing that out-of-province chiropractic services were covered by British Columbia's Medical Services Plan (MSP) on the same basis as physician's services, the woman underwent a series of treatments. When she returned to B.C. and applied to MSP for reimbursement, she learned that the chiropractic services were not covered.

The woman subsequently approached the Ombudsman's office, concerned that she had not been informed by MSP of the restrictions applied to out-of-province coverage.

We contacted MSP and learned that the plan sends an information pamphlet to subscribers at the time that they are granted coverage. This pamphlet contains a brief reference to chiropractic services received out-of-province. However, the reference is not under the heading "Coverage During Absence from British Columbia." In addition, the pamphlet is sent to the subscriber only at the initiation of coverage and it may be several years before the subscriber leaves the province.

We arranged a meeting with officials of MSP and the Ministry of Health's Information Services Branch to discuss the problem. A new information pamphlet has now been prepared dealing exclusively with out-of-province coverage and a poster giving information about MSP coverage has been placed in the waiting rooms of all medical practitioners. In addition, MSP is studying ways to include relevant information about services with their regular billings.(CS87-65)

Adoption blocks issue of certificate

A woman born in Prince Rupert required a birth certificate to become enrolled as a Native Alaskan with the U.S. Bureau of Indian Affairs. The birth certificate was required to prove she was a descendant of a Native Alaskan. Because the complainant had been adopted, the Vital Statistics Division could, by law, only provide a copy of the birth certificate as amended following the adoption. This woman, however, required the original birth certificate to establish the necessary proof. She complained to the Ombudsman's office about this refusal.

We contacted the acting director of Vital Statistics, who explained that the *Adoption Act* did not allow her to release a copy of the original birth certificate. However, the director did agree to send a certified extract of the record of the complainant's birth to the U.S. Bureau of Indian Affairs so that proof of parentage could be established.(CS87-66)

Revealing SIN not required

We received a complaint from a person who wished to apply to the Medical Services Plan (MSP) for Premium Assistance. The complainant was objecting to the MSP requirement that applicants for premium assistance divulge their social insurance number (SIN) on the application. The complainant asserted that MSP is not specifically authorized by law to require the information. MSP staff had explained to the complainant that the number was required to verify an applicant's taxable income with Revenue Canada.

We discussed this complaint with MSP officials and clarified with them that requiring a social insurance number is a merely matter of administrative convenience. They agreed that the application for premium assistance would be processed without the SIN if the complainant obtained a letter from Revenue Canada confirming his taxable income.(CS87-67)

Withdrawn lagoon approval justified

In 1965, a developer was granted approval to develop a tract of rural land. Subsequently, over the years he would carve out a few lots, build homes and sell them. Policy of the day allowed for sewage lagoon systems on lots at least four acres in size.

Between 1977 and 1979, the developer created, by separate plan, eight two-acre lots on which he applied to build sewage lagoons. The Ministry of Health, which must approve sewage disposal in unorganized areas, opposed this form of sewage disposal and varying soil conditions and high water table readings in the area caused other sewage disposal concerns. There were many meetings and studies and, as this area had become part of a city expansion, municipal officials became involved. In 1979, as a compromise for all parties, the ministry approved either "a sewage lagoon or subsurface (i.e. tank) sewage disposal system if soil conditions allowed."

On the strength of that approval, the developer built a short road, put in a water pipe system to city standards and sold 2 undeveloped lots. Then in 1984 the ministry, concerned about the hazard to public health, withdrew its approval for lagoons on 2-acre lots because of actual experience with malfunctioning lagoons in the area.

In 1987, the developer complained to the Ombudsman, claiming the ministry had improperly withdrawn an approval. He sought compensation from the Ministry of Health for the development work he had done.

Our investigation confirmed that the ministry's studies fully supported its contention that lagoons on the smaller lots posed a public health hazard. The developer still had the option of installing subsurface systems but, by his own choice, refused to do so. Furthermore, the physical layout of the lots allowed for a simple conversion of the 2-acre parcels to 4-acre parcels but the developer refused to entertain that idea due to perceived economic loss.

We concluded that the ministry properly withdrew the lagoon option for the smaller lots and that it was the developer's personal choice not to pursue the other two options. Hence, his claim for compensation could not be supported.(CS87-68)

Air ambulance covered

A man had to be transported from a hospital in northern B.C. to a hospital in Edmonton for surgery and then back to the B.C. hospital following the surgery. Arrangements with an Alberta air ambulance company were made by the complainant's physician.

Later, when the man contacted the Medical Services Plan (MSP) to ask that the ambulance bill be paid, he was told that this type of service was not covered. He then contacted the Ombudsman's office and asked us to investigate.

We contacted the director of operations of the Emergency Health Services Program and learned that this service could be covered by the ministry, not through MSP but through the Emergency Health Services Program. The director reviewed the case and determined that the ministry would pay the air ambulance bill for the complainant.

In our investigation, we contacted the senior supervisor of out-of-province claims section at MSP who agreed to review air ambulance referral procedures with staff.(CS87-69)

Father's consent to name change not needed

A lawyer representing a parent called our office and stated that the Vital Statistics Division refused to process an application for a change of name of the parent's child. The director of Vital Statistics had indicated to him and his client that the consent of the child's father was required though the parents were unmarried and the mother had custody of the child.

We contacted the director of Vital Statistics and suggested to him that the *Name Act* did not require the father's consent. The director reviewed the current wording of the Act and agreed that the father's consent was not required. He subsequently processed the parent's application and changed the practice of the division to comply with the Act.(CS87-70)

Community needs speech pathologist

A parent in a small community complained to the Ombudsman's office about the lack of speech pathology services available locally for pre-school children. She and several other parents had to take their children on a four-hour round trip over mountain roads to obtain these services. This was not only expensive and difficult for the families concerned but in winter, the roads were often closed and the children's progress would be interrupted.

We contacted the director of the Speech and Hearing Branch who reviewed the community's problem. The director acknowledged the need for developing speech pathology services in the community and asked concerned agencies and groups in the community to submit an implementation proposal.(CS87-71)

Nursery qualifications questioned

A parent contacted the Ombudsman's office when the nursery school which their child attended hired a new supervisor who was not fully qualified. The parent felt this could mean that the nursery school no longer met the licensing requirements under the Provincial Child Care Facilities Regulations.

We contacted the Provincial Child Care Facilities Licensing Board and learned that the board had received an application from the nursery school for an exception to the licensing requirment. The board reviewed the qualifications of the supervisor and found that, as she was soon to be fully qualified, a temporary exemption would be acceptable. The board has the power under the legislation to allow such an exemption. We relayed this information to the parent and the concern was satisfactorily resolved.(CS87-72)

Not enough by half

We were contacted by a Medical Services Plan subscriber who some time before had undergone part of the surgical procedures performed in gender reassignment surgery. At the time, MSP gave prior authorization for payment for this surgery. When the subscriber then asked MSP for authorization for completion of the gender reassignment process, the subscriber was refused on the basis that gender reassignment surgery had been "frozen" pending a review of the program.

We contacted the chairman of the Medical Services Commission and requested his review of the issue. The chairman agreed that even though the gender reassignment policy was under review, it would be unfair to deny the remaining surgery to someone part way through the surgical process.(CS87-73)

Too long for retroactive coverage

A woman had major surgery and had a large bill from her physician which the Medical Services Plan would not cover, as three years earlier, her coverage had lapsed for non-payment of premiums. When MSP refused to pay, she came to the Ombudsman, suggesting that if she paid the premiums for the past three years, MSP should be obligated to re-instate coverage retroactively and assume responsibility for the physician's bill which exceeded the cost of the premiums.

When we investigated, we found that MSP policy allows retroactive re-instatement for up to eight months after coverage has lapsed. Beyond that time, a person must re-apply as a new applicant, without retroactive coverage. We also learned that the complainant's case had already been reviewed by the ministry for possible exception to the policy but had been denied.

Our finding in this case was that MSP had not acted unfairly in refusing to re-instate the complainant's coverage. We advised the compainant of this and closed the investigation. (CS87-74)

Minor worried about premium assistance

A 15-year-old girl who was living on her own obtained medical coverage from the Medical Services Plan at the 'premium assistance' rate. She became concerned, however, that MSP would not continue the premium assistance because she was unable to provide them with a social insurance number (S.I.N.) which MSP requires to verify financial eligibility for premium assistance through Revenue Canada. She could not get a number because she was unable to obtain a copy of her birth certificate from her province of birth. She called the Ombudsman for assistance.

We contacted MSP and advised them that we would assist the young woman in obtaining a copy of her birth certificate from the other province so that she could apply for a S.I.N. MSP agreed to continue the premium assistance while we pursued this. With the assistance of the other province's Ombudsman, we were able to obtain a copy of the caller's birth certificate and forward it to her. The caller has now been able to apply for her S.I.N., and MSP is continuing premium assistance until it arrives.(CS87-75)

AIDS test for deceased

A person qualified in first aid had been working in a logging camp when an emergency request for assistance was radioed from a neighbouring camp. There had been an accident. The victim suffered severe injuries and was coughing up blood. Responding to the call, this person went to the camp and administered first aid, including CPR and mouth-to-mouth resuscitation but the injured worker died. He knew nothing about the deceased's background and became concerned about the possibility of contacting AIDS. Subsequently, he contacted the Ombudsman's office to enquire if he had the right to request the deceased's blood be tested for AIDS.

We discussed the matter with the Medical Health Officer, Emercency Health Services and Worker's Compensation Board. There was uncertainty about how accurate a test for AIDS on blood from a cadaver would be. The test was done with consent from the deceased's relatives. There are, however, recommended practices for all workers who may possibly come into contact with infectious people or material, either pertaining to AIDS or any infectious disease. These guidelines are outlined in Worker's Compensation Board manuals and Emergency Health Services policies. As it was possible that the caller had been infected, an immediate blood test was recommended for the man as well as another in six months and all the precautions against transmitting the virus were explained.(CS87-76)

Institutions

In 1987, our office handled three complaints made against Glendale Lodge in Victoria or Woodlands School in New Westminster. All three focussed on the downsizing of the institution and the possible adverse effect on a close relative by moving the person from the institution to a smaller community residence.

Both of these institutions are slated for closure by 1991 as the government has embarked on a program of developing community-based resources as alternatives to large institutions. In 1981, Cabinet made the decision to phase out institutions in British Columbia for people who are mentally handicapped by moving them into small, carefully designed community residences where they have more opportunities for growth and a lifestyle more like our own. These community residences are being planned by the Ministry of Health for individuals with multiple handicaps and by the Ministry of Social Services and Housing for mentally handicapped people who have fewer needs.

There are also extensive plans for follow-up and monitoring of the residents once they have been placed in the community. Relatives of residents have been invited to involve themselves in this aspect once the residents have actually moved to a community setting. In addition, the local Ministry of Health or the Ministry of Social Services and Housing will be assigning a social worker to be responsible for monitoring of the group homes in his or her area. Our office is also reviewing both of the ministries' Long Term Care plans and follow-up policies and procedures.

As community placements become the order of the day, at the institutions mentioned above and those such as Riverview Hospital in Port Coquitlam, the need for effective monitoring becomes more prominent. Appropriate safeguards are necessary so that the province's mentally ill and mentally disabled do not end up in the correctional system. This criminalization of the mentally ill or disabled occurs when a person living in the community without adequate supervision or help commits an offence which comes to the attention of the police. Arrested and charged, the individual faces being remanded in custody and may later be sentenced, and thereby be placed back in an institution. The Corrections Branch is not equipped to deal with a large number of people who otherwise would be in a mental health facility.

Similarly, the Forensic Psychiatric Institute cannot accommodate a large increase in patient admissions or an excessive number of court remand referrals. The present facility is old and depressing as a hospital setting. Persons kept in such facilities for long periods of time grow accustomed to the aging structures. But visitors and newcomers may be shocked by the facilities where persons are kept for years. The facilities also stifle program initiatives by staff and limit treatment modalities. The best news we have heard concerning the Forensic Psychiatric Institute is the possibility that the building will someday be replaced.

Further comment on the Ombudsman's work within provincial institutions in general is found in the introduction to the Corrections Branch section under the Ministry of Attorney General.

Small amenities mean a lot

A woman resident at the Forensic Psychiatric Institute complained that only one beverage was available at night time for snacks. She wanted an option

for those who were not coffee drinkers. She was reluctant to raise the matter with administration as she considered it quite insignificant. But she did mention it to a visiting Ombudsman officer.

The woman's ward is quite small and confining. As the only unit for women, the ward usually includes those on remand, patients awaiting return to court following psychiatric assessments, and those who are there under an Order-in-Council or long term care. In our discussions with the administration, we found officials wanted to further the woman's sense of participation in the unit and opened a small kitchen area where they could prepare their own snacks or beverage. By the purchase of some supplies through the canteen, residents may now prepare their own evening choice of beverages. We considered the matter resolved.(CS87-77)

Patient information release policy urged

In 1984, a patient at a mental health centre contacted us after being denied access to the records of his treatment. He had moved to B.C. from Ontario and some of the records to which he wanted access were notes referring to his treatment in Ontario.

This complaint raised the question of the status of third-party information held on file. The centre believed that it could not release such information without the consent of the third party, in this case the physicians and/or nurses in Ontario. But our enquiries also revealed that none of the mental health centres had a written policy covering release of their own files as well.

We suggested that the centres should develop a formal policy covering the release of patient information. It took a while, but the Mental Health Services Division of the Ministry of Health did develop a comprehensive policy, instituted in 1987, which deals not only with the patient's own access but also with sharing of information with other agencies such as the courts, public trustee and coroner's office, and when a patient's release must be obtained before information is shared.

For the patient himself, it is now clear that he has the right to internally-generated information on his care and treatment, in most cases. The patient also has the right to add his own written comments to his file, after he has reviewed that information.(CS87-78)

Who's the patient here?

The intake ward of a psychiatric hospital can be confusing to a new patient for many reasons. One new arrival at the Forensic Psychiatric Institute in Port Coquitlam had difficulty distinguishing staff nurses from patients. Nursing staff wear informal clothing rather than hospital uniforms to help break down the "we/them" barriers. The problem was, when this new patient was told to do something by another person in an open ward, he was unable to tell if the person was a staff member or a patient. This patient approached an Ombudsman officer who happened to be visiting the institution at the time.

Normally, patients are assigned a nurse case coordinator who assists in introducing the patient personally to the procedures of the ward and to staff members. In this case, a special orientation session was held for this person.(CS87-79)

Our enquiry assured patient

Patients in mental health facilities sometimes become confused or suspicious about the management of their affairs, even though the facts may have been explained to them a number of times.

A patient told an Ombudsman Officer that someone was stealing his pension. Our enquiries confirmed that his small disability pension was being paid regularly into his account at Riverview Hospital's business office. He was able to requisition funds from his account for incidental expenses and, indeed, he did so regularly. He was also able to check on the balance at any time, either in person or through a staff member.

The results of our enquiries were not surprising and staff members may even have felt they were unnecessary. However, all sincere complaints must be dealt with and, in this case, we hoped our letter to the patient would serve as a ready reference for him if he again became worried about his funds.(CS87-80)

Help sought to care for quadriplegic

An employee of a Rehabilitation Hospital contacted the Ombudsman's office when she became concerned about the provision of attendent care to a 15-year-old quadrapalegic who was soon to be discharged to the care of his family. The employee felt that, because of the family's circumstances and the nature of the care required, outside help would be required. She was having difficulty in determining which government agency would be able to assist because the patient, being under 19 years old, did not appear to meet the eligibility criteria for the existing care programs. The employee decided to contact the Ombudsman's office.

We asked the assistance of the executive director of the Services to The Handicapped Division in locating the care services required. The executive director reviewed the case and acted as a liaison to ensure that care was provided that would allow the patient to return to his parent's home.(CS87-81)

Rough handling complaint not justified

We were contacted by a concerned parent who felt that his adult daughter had been handled in an unnecessarily rough manner during her stay at the

psychiatric ward of a hospital in their local community. The father believed that his daughter had been inappropriately placed in pajamas against her will on her return from a pass into the community. The father believed that this had been done with the assistance of male security guard, which the father also felt was inappropriate.

We reviewed the incident in question with the president of the Hospital Society which operates the hospital. We found that the complainant's daughter did not have authorization to leave the hospital on the night in question, but had left nevertheless for several hours and had consumed alcohol while on medication. The daughter had returned to the hospital in a violent state. She had been placed in pajamas to prevent her leaving the hospital again and further jeopardizing her health and safety. We determined that the male involved was a male nurse, not a security guard.

Given these circumstances, we explained to the father that we considered his complaint to be unsubstantiated by our investigation.(CS87-82)

Billing number discrimination

Dr. M. complained to the Ombudsman's office that a Medical Services Commission decision to refuse to grant her a permanent practitioner number was improperly discriminatory. She asserted that while she was refused a permanent number, another physician (Dr. W.) had applied under similar circumstances in the same practitioner area at the same hospital and the commission granted him a number.

We investigated this case only from the perspective of fairness in the administration of the commission's policies associated with granting practitioner numbers. We did not consider the propriety of the commission's decision to grant Dr. W. a permanent number or the legitimacy of the Medical Services Act and Regulations.

Our inquiry revealed the following facts:

- Dr. M. had requested a permanent number in July 1985 and Dr. W. had requested one in September 1985.
- Both doctors were on a short-term locum status at the same general hospital. Neither doctor had full admitting privileges at the hospital.
- Neither doctor had a 'letter of need' from the Medical Manpower Committee at the general hospital indicating another was needed at the time when Dr. W. was granted a permanent practitioner number.

The commission confirmed these facts and explained the distinction it made between the two doctors' applications. It considered Dr. M's application dormant. When it had denied her a permanent number, it had advised her of the requirements for obtaining a permanent number - hospital privileges and a statement of need from the Medical Manpower Committee of the hospital in the area in which she wished to practice. The commission did not hear from Dr. M. about any further steps she had taken in aid of her application for a permanent number until December 1986.

Dr. W., on the other hand, had advised the commission in November 1986 of the results of his efforts to obtain privileges and a statement of need from the general hospital. Although he had been unsuccessful, his efforts had the positive effect of bringing his "advanced application before the commission for its consideration." The commission had determined that it was reasonable to rank an applicant who had pursued the avenues suggested to him by the commission ahead of an applicant who had not taken any steps toward obtaining a permanent number after an initial application. Given that the legislation did not require or suggest how the commission should rank incomplete applications or applications without hospital privileges and a demonstration of need, the commission had difficulty in understanding why its decision should be considered discriminatory. Nevertheless, it offered to reconsider Dr. M's application.

From our point of view, it remained a mystery how notification of Dr. W's failure to obtain privileges and a statement of need from the general hospital could advance his application for a permanent number in any way. It certainly begged the question of why a number was granted at all. We remained of the opinion that there was insufficient distinction between doctors W. and M. to justify the discrimination in the treatment of their respective applications.

The commission reviewed Dr. M's application and assigned her a number. (CS87-197)

Clerk blocked billing number

A doctor complained that the Medical Services Commission had improperly denied her a permanent practitioner number. She explained that she had attempted to submit her application for such a number prior to changes in the Medical Service Act and the commission's subsequent deadline, but had been turned away because her application was incomplete.

The doctor had recently left her practice in Manitoba to join her husband, also a doctor, in B.C. She had applied for, but had not received her official registration with the College of Physicians and Surgeons at the time of her application for a permanent number. The clerk at the Medical Services Plan office had refused her application when seeing the doctor was not registered with the college.

Our office gave this information to the chairman of the commission who agreed to review the matter. He confirmed that the doctor had indeed been turned away by the clerk when, in fact, the clerk should not have assessed the application.

The commission granted the doctor an unrestricted practitioner number. (CS87-198)

Ministry of Labour and Consumer Services

Our office continues to enjoy a good relationship with this ministry. Staff respond to our complaints quickly and, in most cases, we are able to conclude our investigation with one or two telephone calls, or a letter.

The bulk of the complaints continues to involve persons complaining about the Employment Standards Branch's process for obtaining outstanding wages taking too long. In this type of case, we usually confirm with one of the branch managers where the claim is situated in the system and advise the complainant. We also remind a person of the right of appeal. We appreciate the cooperation shown by the branch and their willingness to take a second look at a situation, where warranted.

A realignment of ministries in 1986 widened the Ministry of Labour's reponsibilities. One new area, the resale and distribution of liquor, generated a number of complaints to the Ombudsman about licensing procedures. At the request of the Ministry of Labour and Consumer Services, the Ombudsman's office prepared a systems report in 1987 on the administration of liquor control and licensing in B.C., Public Report #6. Many of the report's recommendations are being incorporated into ministry policy. Please see the introduction to this annual report for more details.

Resolved:	19
Not resolved:	-
Abandoned, withdrawn, nonjur:	6
Not substantiated	22
Declined, discontinued	43
Inquiries	12
Total number of cases closed	102
Number of cases open December 31, 1987	19

Pay requested for sleep time

A husband and wife had been employed as house parents at a group home for mentally handicapped children in Victoria. In this man's opinion, they had been underpaid while working there. He thought the employer had not complied with the minimum wage provisions of the *Employment Standards Act* because neither he nor his wife were paid for work during the sleeping hours of 10 p.m. to 6 a.m. each day.

His claim with the Employment Standards Branch was investigated by an industrial relations officer. The officer concluded that neither he nor his wife had been underpaid. The ex-employee then requested a review of the decision by the branch director to which he is entitled under the *Employment Standards Act*. In this review, the claimant was given the opportunity to provide additional information regarding work from 10 p.m. to 6 a.m. daily. If he could substantiate any hours of actual work during that period that resulted in him or his wife receiving less than the minimum wage, the branch would be prepared to seek an adjustment on their behalf. The claimant did not provide any information to the branch which substantiated his claim and the deputy director subsequently wrote the couple that his findings upheld the industrial relations officer's decision.

Feeling that he had not received a fair resolution in this review, the man complained to the Ombudsman's office. In light of the information we obtained during our investigation, we could not substantiate this complaint.(CS87-83)

Wages won on appeal of IRO decision

A man had been working as a carpet installer. After putting in a lot of overtime, he was told by his employer that he would get a couple of extra weeks paid holiday in lieu of the overtime. The extra two weeks holidays never materialized and the employee was laid off. He filed a wage loss complaint with the Employment Standards Branch.

The investigating industrial relations officer (IRO) told the complainant he was unable to investigate the matter because there were no records of employment available to confirm or deny his claim. The complainant felt the decision of the IRO was not based on a thorough investigation and he thought he had been "shafted."

This man subsequently contacted the Ombudsman's office. He was unaware he could appeal the IRO decision to the director of the Employment Standards Branch under the *Employment Standards Act*. The complainant did appeal the decision and, after a review by the deputy director, he was awarded outstanding wages of $675. (CS87-84)

Disappearing employer brings delay

This complaint is but one example of the many the Ombudsman's office receives each year concerning the amount of time necessary to settle a dispute over outstanding wages.

A man was dismissed from his job. He was unable to obtain all of his outstanding wages so he filed a complaint with the Employment Standards Branch. A year went by and, because he had still not received his wages, he called our office to complain about the amount of time it was taking the branch to settle his claim.

We confirmed that the man's claim had been investigated in a timely manner by an industrial relations officer and an order to pay was issued. The delay in reaching a settlement was caused when neither the industrial relations officer nor a sheriff could locate the employer or his equipment to serve the necessary writs. The branch had already spent over $700

on sheriff's fees to no avail. However, the industrial relations officer assured our office that he would continue the search to find the missing employer.(CS87-85)

Notification of claim adequate

An employer complained to the Ombudsman's office when he was required to pay two wage claims to two previous employees. He claimed that the Employment Standards Branch did not adequately notify him about the claims before a sheriff served him with a writ of seizure.

When we investigated, we found the Employment Standards Branch had taken all of the appropriate steps usually taken to resolve wage loss claims:

- The branch issued a corporate order to pay to him. The order was sent by certified mail.
- When neither a reply nor an appeal was received, a certificate was issued, via certified mail.
- When no response was forthcoming from the Certificate, a writ of seizure was issued.
- The industrial relations officer handling his case said that he had advised the complainant earlier that the branch would be sending him documents relating to his ex-employees' claims.

In conversation with our office, the complainant acknowledged receiving registered mail slips, but did not bother to pick up the mail. The Employment Standards Branch area manager said he remembered the complainant saying that he had not been acknowledging his mail. Apparently the complainant told him the reason was an argument he had with the municipality concerning the height of a sign on his property.

We advised the complainant that, after being told that he would be receiving mail regarding an Employment Standards Branch matter, it only seemed reasonable to pick up that mail. Failure to do so would seem to negate any claim that the branch had sent no prior notification before the sheriff arrived. In view of the above circumstances, we could not substantiate his complaint.(CS87-86)

Ministry of Municipal Affairs

Complaints received about the Ministry of Municipal Affairs are often directed towards the Office of the Inspector of Municipalities. Citizens seek redress through the inspector on issues that involve the administration of municipalities, regional districts or improvement districts. However, the legislated responsibilities of these levels of government often preclude any formal involvement by the Inspector of Municipalities. Therefore, citizens whose complaints are unable to be resolved by the inspector often come to the Ombudsman's office for assistance. Municipal levels of government are among those authorities listed in the schedule of authorities to the Ombudsman Act but are as yet not proclaimed and therefore outside the Ombudsman's jurisdiction. However, through a well-established working relationship with the Ministry of Municipal Affairs, the Ombudsman's office can often provide some assistance to complainants, both within and outside its jurisdiction, where possible.

Resolved:	6
Not resolved:	-
Abandoned, withdrawn, nonjur:	7
Not substantiated	15
Declined, discontinued	24
Inquiries	9
Total number of cases closed	61
Number of cases open December 31, 1987	13

Procedural minutia vs. voting intent

After heated debate at a regular meeting of a regional district board, the chairman took the count, declared the vote a tie and under authority of Section 225 of the *Municipal Act*, went on to declare the motion defeated. He immediately realized he had not voted himself, so he voted against the motion to give the majority to the negative and again declared the motion defeated.

The Ombudsman's office received a complaint about this vote. The complainant asserted that the regional district's bylaws stated that all present must vote and if one refrained from voting, that party's vote would be recorded as an affirmation. He suggested that had the bylaw been applied in this case, the motion would have passed.

The complainant had approached the Inspector of Municipalities regarding the vote, but his office had ruled that, while the procedure was unusual, the will of the majority was met. The Inspector of Municipalities chose not to intervene and the complainant suggested to us that he should have exercised his power to hold a public enquiry on the issue.

Our analysis of the matter clearly showed that in his efforts to maintain order, the chairman, in a momentary lapse, forgot to vote. Nevertheless, he was positioned to vote against the motion, not refrain, and with explanation, he voted immediately. We sought the interpretation of a recognized authority on parliamentary procedure which confirmed that, while occasional errors will occur, the goal of procedural rules is to have a free and fair interchange of viewpoints that lead to acceptable conclusions. While slovenly or indifferent procedure must be avoided, fussy dependence on procedural minutiae can be equally non-productive. Our conclusion was that the Inspector of Municipalities had properly addressed the issue, that there was no miscarriage of justice and that a public enquiry was not warranted.(CS87-87)

Signature was in wrong place

A woman submitted her application for a Home Owner Grant and paid the difference between her grant and the total municipal and school taxes. She subsequently received a notice of tax arrears equal to the sum of the grant. A tax arrears penalty had been imposed in the notice. When she enquired with a city employee, she was told that her Home Owner Grant was refused because it was not signed in the designated space. It was signed elsewhere in the form. The employee also said that a requirement to notify an applicant of a grant rejection in writing within 14 days was not applicable to this case. On receiving this information, the woman paid the penalty.

Not satisfied with the explanation, however, this woman contacted the Ombudsman's office and related these details. She also described the off-hand, uncaring attitude displayed by the city employee.

We drew this matter to the attention of the Ministry of Municipal Affairs' Finance, Administration and Systems Branch which administers the Home Owner Grant. Having been previously unaware of the case, the ministry took immediate corrective action, ordered the original application to be approved and processed, and ordered the refund of the arrears penalty. (CS87-88)

Gas station ordered closed

An owner of a service station along the TransCanada Highway in B.C.'s interior received an order from the regional fire commissioner to cease operation immediately because he was doing business on a Ministry of Transportation and Highways right of way as a non-conforming use.

When he purchased the gas station in 1981, neither the real estate sales people nor his legal counsel

informed him that the service station was non-conforming. The matter surfaced when the petroleum company required him to replace the underground storage tanks. An application for a permit to do this came to the attention of the fire commissioner who subsequently ordered the business to close because the gas pump operation posed a threat to public safety in relation to increased commercial development on adjacent properties.

Potentially deprived of his ability to earn a living, the owner contacted the Ombudsman's office. We were able to obtain interim authority for the owner to continue with his business while a more permanent solution could be worked out for this property that would satisfy the safety concerns of the regional fire commissioner.(CS87-89)

Most wanted instalment plan

A property owner in an Improvement District wanted to pay the costs for a new water system in one full payment. From public meetings held in the planning stages of the improvement project, the owner understood that Ministry of Municipal Affairs staff had said a single full payment would be an option. The alternative was to pay on an instalment basis over a 20-year period. On realizing the instalment plan had been approved, the owner lodged a complaint with the Ombudsman's office against the Inspector of Municipalities in the Ministry of Municipal Affairs.

In our investigation, we confirmed that Ministry staff had attended the planning meetings to offer advice. On the aspect of payment, the options included a 'once only' full payment. However, it was also explained that the final decision was a legislated responsibility of the Improvement District's directors. As the complainant was the only property owner who wished to make the 'once-only' payment, the directors chose to follow the wishes of the other property owners and invoked the instalment plan. Under these circumstances, the actions of the Ministry could not be faulted and the complainant agreed. (CS87-90)

Variance procedure deemed correct

A complaint came to the Ombudsman's office that the Inspector of Municipalities unfairly refused to intercede in a Board of Variance zoning dispute. The complainant was opposed to the size of a dwelling being constructed in the neighbourhood and had challenged it at a Board of Variance hearing. Despite that, the variance was approved and when the complainant went to the Inspector of Municipalities, the Inspector claimed to be without the power to act. It seemed to the complainant that the board could act without answering to any authority.

Upon investigation, the actions of the Inspector were determined to be correct. The *Municipal Act* delegates certain authority to the municipalities. Rezoning is one such authority. Flowing from that authority, there is the Board of Variance, which is itself controlled by legislation. Access is permitted to the material upon which the board's decision is based but by legislation, the decision is final.(CS87-91)

Ministry of Provincial Secretary and Government Services

The cooperation we received from this ministry and from the Superannuation Commission during 1987 was excellent.

Resolved:	6
Not resolved:	-
Abandoned, withdrawn, nonjur:	2
Not substantiated	4
Declined, discontinued	2
Inquiries	1
Total number of cases closed	15
Number of cases open December 31, 1987	-

Who, and who not, to enumerate

A person complained to us that, when enumerations for provincial elections take place, enumerators automatically exclude mentally ill persons and simply bypass residential facilities for the mentally ill. The complainant felt that enumerators should consider people on an individual basis and should not exclude all those who reside in mental health facilities.

We examined the applicable legislation and found that there is no scope for individual considerations. Rather, the *Elections Act* disqualifies from voting all those people who are detained in a mental health facility or mental institution by authority of an order of a court. In other words, those residing in a mental health facility because a court ordered them there cannot vote. Those who reside in a mental health facility for any other reason can vote.

We suggested to the complainant that if he is aware of residents of mental health facilities who are eligible to vote but are not on the voters list, he should get in touch with the registrar of voters in his area. (CS87-92)

Superannuation Commission

Not required to repay overpayment

A retired former employee of the Workers' Compensation Board, receiving a retirement pension, went back to work in a different position. Shortly after his appointment, he wrote to the Superannuation Commission, advising of his re-employment and asking for information on how much his monthly pension would be reduced because of his re-employment.

Although he reminded the Superannuation Commission of the matter, he heard nothing. His full pension kept on coming, month after month, until finally, 20 months later, he received a letter telling him that he now owed the Superannuation Commission $12,296.98. The letter invited him to transfer this amount directly from his registered retirement savings plan to the Workers' Compensation Board Superannuation Fund. As an alternative, he was advised monthly deductions from his already reduced pension would be possible. He complained to the Superannuation Commissioner personally but this elicited only an apology and an invitation to repay his newly acquired debt at the rate of $512.37 per month. At that point, the man approached the Ombudsman's office.

A similar case occurred several years ago. At that time, legal opinions were obtained by our office with the result that a complainant did not have to repay a pension overpayment that had resulted from an error made by the Superannuation Commission. Once reminded of that earlier case, the Superannuation Commission informed the employee in this new complaint that his remaining monthly pension benefits would not be reduced to recapture the overpayment. (CS87-93)

Refund possible only on termination

A man had been employed by a hospital in Prince George for more than nine years. He transferred from permanent to casual status because he decided to go back to school. In order to pay his tuition fees and generally provide for his needs, he applied for a refund of the money he had paid into his pension plan. He was surprised when the hospital told him that he could not have his money back. The man contacted the Ombudsman's office for advice and help.

We checked into the matter and found out that the information provided by the hospital was correct. According to the provisions of the *Pension (Municipal) Act*, the statute governing the pension plan to which he had contributed, a refund of contributions was only possible if his service with the hospital terminated. His service, however, did not terminate, since he had decided to stay on as a casual employee.(CS87-94)

Ministry of Social Services and Housing

As in the past, we experienced a high level of commitment in 1987 by staff of the Ministry of Social Services and Housing to try to resolve the concerns that come to our attention. A ministry which is involved in the delicate and intrusive roles of assessing the need for the state's intervention when a child is at risk and of establishing a family's eligibility for financial assistance must expect complaints. In general, we continue to be impressed by staff's willingness to respond in the fairest possible way to a client's unfortunate situation.

The year brought a new focus of complaints, however, involving the ministry's role in awarding, managing or cancelling contracts with the private sector. These contracts may be with individuals, non-profit agencies or companies for the provision of a service to the ministry's clients, such as operating a group home, a day program for developmentally handicapped adults, a specialized treatment home for a disturbed child, or transition or abuse-counselling services. While it is not the only ministry involved in contracted services, the nature of the services and the volume of contracts has meant many of our complaints regarding contracted services have involved this ministry.

Contracts are, of course, legal documents, setting out terms and conditions which bind both parties. We do not dispute the ministry's right to set such terms. We are concerned, however, about fairness in the administration of a contract and the ministry's ability to monitor a contract to ensure fair treatment of and good service to its clients. For example, we are currently considering such questions as:

- Should the ministry set a one-month notice period for either party to terminate a group home contract? Can one make good planning decisions for children in care with one month to seek alternative homes.
- What should the ministry do if a society with which it contracts suspends clients from a program without opportunity to appeal or review the decision? Decisions of ministry employees are subject to review on a client's request. Should a client receive less due process when the service is delivered in the private sector?
- How can the ministry monitor programs to ensure its clients receive good care while still maintaining the "arms-length" nature of a contractual relationship?
- If a contractor does not provide good service, how can the ministry ensure that clients do not suffer or lose service in the disruption of a change in the contract?

These are just a few of the thorny questions raised in the past year. As the ministry, like other government agencies, moves further into the field of contracting, policies will evolve to meet the needs of the new problems. In the meantime, we are trying to answer the problems of individual complainants while providing a resource for advice to the ministry in the development of administrative policy.

Resolved:	855
Not resolved:	-
Abandoned, withdrawn, nonjur:	102
Not substantiated	364
Declined, discontinued	141
Inquiries	347
Total number of cases closed	1809
Number of cases open December 31, 1987	326

Minor granted assistance

A young man was living in his own apartment and attending the local high school. He said he wanted to complete his Grade 12 and needed financial assistance to do so. When the ministry refused to give him financial assistance, he contacted the Ombudsman's office.

We contacted the vice-principal of the school who told us that the boy was attending classes and felt that every effort should be made to accommodate his schooling. Because the youth was under the age of 19, he was not eligible for the income assistance in the same way as an adult. However, we felt that the youth was making a genuine effort to get an education and the ministry should do everything that it could to help him. The ministry reviewed the matter and agreed that he should reveive financial support for living expenses and shelter costs while he is in school.(CS87-95)

Wrong impression left

A woman contacted the Ombudsman's office with a concern about the Ministry of Social Services and Housing. She said that there had been an allegation that her children were in need of protection and social workers had attended the school to interview the children.

We contacted the ministry and confirmed that the allegation had been unfounded and that the children were not in need of protection. However, as the school principal was aware of the investigation, the mother felt it was unfair for the ministry to leave the school with unresolved questions about the children's safety.

The ministry agreed that when children are interviewed at school, school officials should be informed

of the general outcome of the investigation. In this case, ministry staff met to discuss the matter and reinforce the importance of providing school officials with information about the outcome of an investigation. The complainant felt that this resolved the matter and would help others who might experience similar situations.(CS87-96)

Youth didn't want to go to father

A woman contacted our office with a complaint about a situation involving a youth who was living with her family. She told us that the youth's mother, recently deceased, did not make provisions for the child's custody and that the father, currently living outside of Canada, would not assume custody.

According to the woman, plans were being made by the ministry to send the boy to his father against his wishes. We contacted the ministry and the matter was reviewed. The youth was placed in foster care in the home in which he had been residing.(CS87-97)

Woman worried about child's apprehension

A woman complained to the Ombudsman, stating that the ministry had acted unfairly by insisting that she meet with ministry officials face-to-face to discuss allegations that she had abused her child. She said the matter had been investigated by the ministry and she had been told that no further action would be taken. She therefore felt a meeting unnecessary. She contacted our office when the ministry requested a warrant to gain access to her home and she thought that her child might be apprehended.

We spoke with the district manager and arranged a meeting involving the complainant, her lawyer and ministry officials. As a result of the meeting, the issues were clarified and a process acceptable to all parties was worked out for resolving the matter. The ministry agreed that a communication breakdown had led to the problem and that the office would take steps to rectify the communication problems. (CS87-98)

Turned down as foster care home

A woman had been providing foster care for children but had been informed by the Ministry of Social Services and Housing that her home would not be approved for continued use as a foster home. She then applied to provide foster care for children with special needs but was turned down for that as well. She subsequently complained to the Ombudsman's office.

We contacted the ministry and it was agreed that a new home study, including an application, reference checks and an interview with the complainant would be completed. As a result of the more complete information, her home was approved for foster home use and a special needs child was placed with her.(CS87-99)

Friday afternoon help

Every so often, we come across an employee who goes that extra mile to provide outstanding service. This happened when we received a telephone call one Friday afternoon from a desperate couple that had been on income assistance.

When they believed the husband had found work, they called the ministry and asked that their file be closed. Unfortunately, the job did not materialize. The couple had a small baby and lived 50 miles from the nearest hospital. They called us in great distress because their baby was sick, they had no food, money or transportation, and when they had called the ministry, were told their file was closed.

We contacted the office immediately and explained the seriousness of the situation. The worker arranged for transportation for the family to the ministry office and waited after working hours until they arrived. She then processed a food voucher for them and ensured that the baby was checked over in the hospital. Through the worker's assistance, the husband also found another job.(CS87-100)

Bending to meet special needs

Income assistance is intended to ensure those in need have food and shelter. However, some problems arise from the fact that individuals do not always "need" in a way that fits the system. Sometimes the system, through local staff, must bend a little to meet individual needs.

For example, a married woman in the Interior began a small business, realizing that it might be months before the business broke even, let alone was able to pay her a salary. It was not a problem until her marriage broke up. She then went to the ministry for assistance.

The *Guaranteed Available Income for Need Act* is designed to help people who have exhausted all options, not to help keep afloat a business which cannot pay its way. This woman's problem was the business would make it if she was helped out for just a little while. If she folded her business to collect assistance, she could be out of work for a long time.

Local ministry staff were creative in considering ways in which this woman's case could be made to fit the rules. They proposed that she do her business evenings and weekends and look for paid work during the day. In the meantime, if there was income to be had from the business, though less than her assistance, "top up" cheques would be issued. All of this would need approval as an "exception" to policy but it did hold out some hope for the woman to become self-supporting. (CS87-101)

File loss ministry's problem

A man receiving Guaranteed Available Income for Need for Handicapped (GFH) benefits was told that he must reapply for his benefits. A file audit had been done by ministry staff and it was discovered that his application for the special benefits had been lost and was not on file. He was told that if he did not reapply within two months, he would be cut off assistance.

The GFH application process is complex and involves the individual's medical doctor and ministry staff at the district and central levels. The final approval or refusal may take as long as two months to obtain. Approval means higher monthly benefits and medical coverage.

When this man contacted the Ombudsman's office, we agreed that he was not responsible for documents housed with the ministry. We called the district supervisor and she offered to resolve the missing document problem internally. She assured us that this man would not be cut off assistance.(CS87-102)

Help with artificial leg repairs

A young man on income assistance had recently been offered a job as a gas station attendant. This employment offered him a chance to become independent. However, he had an artificial leg that was in constant need of repair and replacement.

The district office of the Ministry of Social Services and Housing was not prepared to continue paying the high costs of these repairs because he was no longer receiving income assistance. Still, the young man was not in a financial position to pay himself. Consequently, he was in danger of losing his artificial leg and his job, since he could not continue to work at the gas station with only one leg.

We called the ministry to explain the situation. A social worker, supervisor, medical consultant, pharmacare director and prosthesis technician were all consulted. An agreement was reached whereby the pharmacare division of the ministry would pay the outstanding and on-going repair bills if the district office financed regular check-up visits to the prosthetist. As a result, this man was able to keep his artificial leg and his job.(CS87-103)

Contract extension saves daycare

A young mother on income assistance was trying to finish her Grade 10. She had signed a training contract with the ministry - an Individual Opportunity Plan - which provided assistance such as payment for daycare so that her three year old would be cared for while she was at school.

The woman's Plan stated she was to finish by February 1. However, due to personal set backs, she had missed several days of school and was certain she would not be able to finish by the contract date. She asked her rehabilitation officer for an extension of the contract. However, staff changes in the district office meant that the entire contract would have to be reviewed before an extension could be authorized. Before the review took place, the contract expired, daycare was cancelled and the woman was unable to return to school.

We contacted the district supervisor. He met with the rehabilitation officer, a social worker and a financial assistance worker. He also contacted the school teacher. He decided to extend the mother's contract for 2 months. The woman was back at school the next day, confident she would soon have her Grade 10.(CS87-104)

Hay fever drug cost nothing to sneeze at

A man receiving handicapped benefits was suffering badly from hay fever. Because he had epilepsy, he was on anti-convulsive medication and could not take antihistamines that contained a sedative. One of the two hay fever drugs that he could take had recently been removed as a prescription drug by Pharmacare. As Pharmacare will not pay for non-prescription drugs, when this man's hay fever medication was removed from the Pharmacare coverage, he had to pay an extra $45 a month.

We contacted staff in the Pharmacare division. They indicated that if this man got a letter from his doctor stating his particular medical situation and medication conflict, Pharmacare would cover the cost of the non-prescription antihistamine. We contacted the ministry's district supervisor. He agreed to review the complainant's expenses and issue a crisis grant, if necessary, to pay for the expensive medication until Pharmacare could assume the cost of the drug.(CS87-105)

Between two views of common-law

A man and his friend had been living in a common-law arrangement for a while. His health deteriorated and open heart surgery left him unable to work, with ongoing medication costs of about $200 a month. His spouse worked and had been supporting them but things were tight.

In our discussions with federal and provincial officials, we found that two government agencies viewed this common-law relationship differently. Revenue Canada does not recognize common-law union for income tax purposes, so none of his costs could be claimed on her income tax. The provincial Ministry of Social Services and Housing, on the other hand, viewed them as a family unit, making the man ineligible for social assistance because of his spouse's earnings.

The man approached the Ombudsman's office to see if we could help resolve what seemed to be a Catch-22 situation. Unfortunately, there was nothing we could do. Both systems were interpreting their rules correctly. We did suggest the couple contact a community law group to see if there was support for a legal case on the reasonableness of the federal rules.(CS87-106)

Who foots investigation bill?

The Ministry of Social Services and Housing has inspectors responsible for investigating allegations of fraud. In the course of their investigations, they gather information including bank statements.

During the course of investigating an income assistance recipient, the inspector had requested information from the client's bank regarding the man's account. The man was not found to be committing fraud but the bank deducted from his account the cost of providing statements to the ministry.

We contacted officials of the ministry who were unaware of the situation. After reviewing the case, they agreed that income assistance clients should not have to cover the costs of ministry investigations and agreed to reimburse the complainant.(CS87-107)

Group insurance for contractors' homes?

A woman was providing services to the Ministry of Social Services and Housing on contract for a special needs child. Unsure of the adequacy of her home owner coverage, she contacted her insurance company and was informed that, because of this special needs child's history of high risk behaviour - setting fires - she was not protected by her current insurance.

The woman attempted to acquire additional private insurance but the best option available was a policy with a $5,000 deductible if the fire was started by the child. The policy also required rigorous supervision of the child and if not deemed adequate, the company could declare the policy null and void.

Confronted with such an unsatisfactory alternative, the woman contacted the Ombudsman's office for help in resolving her dilemma. We contacted the ministry's Family and Children's Services Division and found officials were aware of the problem and had initiated efforts to resolve it.

Subsequent to our enquiry, the ministry and the B.C. Federation of Foster Parent Associations (BCFFPA), working together, were able to obtain a group insurance rider for contractors providing in-home care for up to four children. This coverage provides protection against property damage arising from a third party.

To acquire the additional coverage, homeowners providing contracted services may apply, through the BCFFPA by taking out a membership with the association and paying an annual fee of $50. The rider is only valid if the contractor has regular homeowner insurance. Claims for damages must first be made by the contractor to his or her insurance company. If the claim is denied because the damage was caused by a child in the contractor's care, the contractor applies to the BCFFP office for coverage under the group insurance rider. A letter is required from the contractor's insurance company stating that coverage was denied.

The ministry is continuing to look into the possibility of broadening the coverage to include contractors who work with five or more children.(CS87-108)

Another chance for job

A young man on income assistance telephoned our office to say that he was offered a full-time job delivering pizzas if he could pay for the necessary insurance for his car and replace a bald tire. Although the ministry encourages people to find work, ministry staff had told him that no help was available for this kind of expense. They advised him to ask for an advance from his employer.

When the young man complained to the Ombudsman's office, we discussed this with his social worker. The complainant had been given several training opportunities in the past but had yet to complete a course. The social worker agreed, however, to give him another chance and issued a cheque to cover the insurance and a new replacement tire. The man was able to start work the following day.(CS87-109)

Not all chiropractors bill alike

A man who had just moved from Ontario to British Columbia had injured his shoulder. The drugs he was given at a hospital emergency department did not ease the pain, so he wanted to see a chiropractor. The chiropractors he had tried, however, expected him to pay immediately and apply on his own to the Ontario plan for a rebate. Since the man was on social assistance, he could not afford to pay. He contacted the Ombudsman's office and complained that the Ministry of Social Services and Housing would not give him medical coverage.

Although we were sympathetic, his problem was with the chiropractor, not with the ministry. He does not qualify for B.C. Medical Services Plan coverage until he has been in the province three months. During this time, his Ontario coverage is effective and his solution is to find a B.C. practitioner willing to bill Ontario. Many doctors and all hospitals accept other provinces' medical schemes. It gets more difficult with the auxilliary services such as chiropractic.(CS87-110)

Handicapped mother needed phone

A severely disabled mother on income assistance wanted a telephone in her home. She had two young children and was concerned that if something happened, she would be helpless to do anything. The problem was that she had an outstanding phone bill of $400 which had to be paid before the phone could be installed. The Ministry of Social Services and Housing had refused her request to pay the bill, so she contacted the Ombudsman's office.

We contacted officials at B.C. Telephone Company. They agreed to hook up a toll-restricted line (on which no long-distance calls can be made) if the woman could pay $10 each month towards the old bill. The ministry agreed to give her an extra $10 each month to accommodate this arrangement and the telephone was connected.(CS87-111)

Couldn't afford to keep working

A young single mother was working shift work as a cook. She had three children and needed a babysitter. Although she was working fulltime, she was not earning as much as she had received on social assistance so she was still receiving a top up subsidy from the Ministry of Social Services and Housing. She had submitted a request for an additional daycare subsidy, which had been approved by the ministry. However, two months went by and she had yet to receive the subsidy. Consequently, she had to use most of her income to pay her sitter, leaving little for food or anything else. When she contacted the Ombudsman's office, she was contemplating quitting her job because she could not afford to keep it.

We contacted the district manager. He quickly agreed that she needed some extra financial help and issued a cheque so that she could pay her bills and her babysitter. The manager recognized that she was making a sincere effort to stay employed and raise her children but had been caught in a delay of the daycare subsidy. With this extra support, she was able to keep her job and manage her expenses.(CS87-112)

Grandmother gets help

A woman on assistance had been looking after her son's child for the past three months and was unable to obtain extra financial help from the Ministry of Social Services and Housing. She planned to raise the child and had become the legal guardian. Ministry staff told her the father of the child should be providing the extra money required. But the father's UIC claim had just run out and he was soon to be on assistance himself.

We contacted the ministry's district manager and discovered that a social worker had arranged for 'Child in the Home of a Relative' benefits to be provided. However, the district manager had rejected this approach because those benefits are intended for temporary care arrangements only. In this case, the child, still an infant, was going to remain with the complainant until she turned 19.

We suggested to the manager that the ministry consider the child a part of this woman's household for the purpose of calculating assistance and that an agreement be established whereby the father of the child would provide financial help when he was back at work. Any payments the father made would be deducted from the woman's assistance payments. The manager agreed. The grandmother was pleased to know that she would soon be receiving extra money.(CS87-113)

Ramshackle house no asset

An older man had been attempting to provide for his blind wife and himself by working. However, his arthritis had gotten progressively worse and he had been forced to stop working. He approached the Ministry of Social Services and Housing and applied for a handicap pension.

The ministry responded by saying he had too many assets and was therefore not eligible for the pension. One of these alleged assets was a home he rented out. He received $360 in rent but paid $375 each month on the mortgage. He realized he was losing money each month but he didn't feel he could raise the rent and attempts to sell the house at the price he needed to cover the mortgage had been unsuccessful. Yet continuing to own the rental house made him ineligible for ministry assistance. Confronted with this dilemma, he contacted the Ombudsman's office.

We contacted the ministry's district manager and regional director. After numerous discussions, ministry staff agreed that this second house was not really an asset, even within the interpretation of ministry policy, but rather a liability. The husband's request for a handicap pension was marked urgent and approved immediately. With this extra money, the couple was able to meet their expenses and keep their rental house.(CS87-114)

Hydro credit not transferred

A woman on income assistance had trouble paying her Hydro bills. They started to add up to the point where the Ministry of Social Services and Housing stepped in and paid the outstanding balance. It then began deducting money from the complainant's assistance cheque and paying B.C. Hydro directly. However, the monthly deduction exceeded the complainant's monthly Hydro bill and, over time, she acquired a credit with Hydro of approximately $300.

When this woman moved, a key-punching error created a new account at B.C. Hydro at the new address without cancelling and transferring the balance of the account at the previous address. The ministry was paying directly to the new account but the $300 credit remained on the old Hydro account. The woman, feeling that too much was being deducted from her assistance cheques for Hydro, complained to the Ombudsman's office.

It was not until we contacted ministry staff that the $300 credit was discovered. It was found that she was, indeed, paying too much. Subsequently, a cheque from B.C. Hydro in the amount of the credit was delivered to the complainant.(CS87-115)

Family concerned about child's release

A woman contacted our office stating that her stepchild was in the Maples, a residential treatment facility in Burnaby operated by the Ministry of Health. She said that the child had been diagnosed as having a psychiatric condition but that he was ready to be discharged. She was concerned that there was no place for him when he left the treatment centre. The family could no longer cope with the child's condition so he could not return home.

Normally, where a child is mentally ill but not in need of residential treatment, the Ministry of Social Services and Housing is responsible for providing a home for the child in the absence of the parents' ability to do so. However, when we contacted officials at the Maples, we were told because of concerns about this child's treatment and mental health history, the Ministry of Social Services and Housing would not accept responsibility for the child's care. An inter-ministry meeting had been planned to discuss the issue and we asked that we be informed of the outcome as we were concerned that the child receive the proper care and services.

At the meeting, a plan was worked out whereby Social Services and Housing would provide a foster home and Health would provide schooling through the Maples, ongoing out-patient treatment and training for the foster home. It was agreed that the child would be placed on the psychiatric ward of an acute care hospital if he experienced severe symptoms. This case demonstrates the value of a mechanism such as the Inter-Ministry Child Care Committee (IMCC) to bring together the professionals to make a joint plan that is in the child's best interest. (CS87-116)

From foster child to foster parent

A woman contacted the Ministry of Social Services and Housing about becoming a foster parent. She herself had experienced a difficult life as a child. She went through several foster homes and was adopted when she was eight. She had problems during her initial years as a parent which required the involvement of the ministry. But her life was back in order, she had married and had been involved in courses and groups to improve her parenting skills.

When she applied to become a foster parent, the woman went through the ministry's screening process and, based on her past problems in parenting her own child, the ministry rejected her application. She was told that she would not be able to become a foster parent.

The couple felt that the ministry had acted unfairly in denying, for an indefinite period of time, their application to become foster parents and contacted the Ombudsman's office to complain. The woman asserted that she and her husband could provide a good home for foster children, especially those who were experiencing problems similar to those she experienced as a child.

We contacted the district manager and regional director and suggested that the couple be given clear guidelines on requirements for becoming a foster parent, a date at which the application would be reviewed and reasons for the decision.

The matter was resolved when the regional director and children's officer met with the complainant and provided a time frame for re-applying. When the couple re-apply, a home study will be completed and a decision made on the basis of the suitability of the home at the time. The couple felt that this decision was fair and reasonable.

We believe that the ministry must do everything in its power to protect the best interests of children placed in foster homes, but it must also treat foster parent applicants in the most fair and equitable way possible. (CS87-117)

Debt blocked licence renewal

A taxi driver developed diabetes and automatically lost his Class 4 licence (which qualified him to drive a taxi). In hospital for several months and unable to earn a living when he was released, this man had little choice but to apply for income assistance. He tried to get back his Class 5 licence (for regular passenger vehicles) but was denied this because of an outstanding ICBC insurance debt of $500. The Ministry of Social Services and Housing refused to pay his $500 debt.

When he contacted the Ombudsman's office for help, he was confident that he would easily qualify for delivery jobs if he could renew his Class 5 licence.

We contacted ICBC staff who agreed to reduce the debt to $350. Once he paid $25 to the debt, he was permitted to renew his driver's licence. ICBC allowed him to pay the rest once he started working. The man met these conditions and was issued a licence. This meant he could now use his driving skills and experience to look for employment. (CS87-118)

Assistance recipient felt hassled

We received a call from a woman who was confused about the varying amounts of assistance she received each month. Her cheque was held up almost every month and was released only after she met with her social worker. The woman was attending school and was feeling hassled by these constant trips to the ministry office.

A review of her file showed us that her financial situation varied a great deal. Some months, she received maintenance payments from her ex-husband and some months she did not. She worked sporadically and earned extra money. As well, she received a student loan to go to school. All these fluctuating sources of income affected her cheque. As a result, her worker had to calculate her extra income each month and reissue her assistance cheque.

We explained this process to the woman and pointed out that the worker was not deliberately trying to hassle her. Comprehensive up-to-date reporting of all income would likely minimize the number of trips to the ministry office. (CS87-119)

Name removed from abuse registry

In 1983, a child care worker's name was placed on the Registry of Protection Complaints in connection with an allegation that she had abused a child at a day care centre. The allegation had been investigated and substantiated by Ministry of Social Services and Housing staff. The child care worker maintained that the incident involved her skills as a daycare provider and did not constitute abuse. She requested a review of the registration of her name but policy at that time did not provide for a review. She asked if the Ombudsman's office could assist.

When we contacted the ministry, there were some revisions being made to the Registry of Protection Complaints. After several years of study, a new policy was developed to register the names of abused children in a central, computerized index. Abuse by persons other than parents or guardians is not registered in the central index. Registration now only occurs if the ministry provides a service to the child or the child's family. The ministry agreed that neither of these criteria applied to the child care worker and agreed to remove the registration of her name.(CS87-120)

Legal services for minors 'in care'

Sometimes parents and teenage children get into conflict with one another and cannot continue to live together. Still, children under the age of 19 have a right to be maintained by their parents even though they may no longer live at home.

A 16-year-old girl had moved out and was completing high school. A ministry social worker had assisted her in finding an appropriate rooming house. The girl believed that the ministry would also supply her with a lawyer to make a maintenance application against her mother. When the ministry refused, she approached the Ombudsman's office for assistance.

We contacted the ministry to ask if the girl could be supplied the legal services she required. Ministry staff explained that legal services are supplied to minors only in limited circumstances, i.e. when the child is a ward of the superintendent. This girl was simply living independently and had not become a child 'in care' of the ministry. We found this explanation acceptable and referred the girl to the Law Centre for legal assistance.(CS87-121)

No provincial help to reach new job

The Ministry of Social Services and Housing does not have the mandate to meet every request for assistance that comes to them. When requests are turned down, the Ombudsman's office may receive complaints even though the request for assistance does not come under any existing program under the *GAIN Act*.

For example, a woman was working with a family that had recently arrived in Canada. The couple was receiving some benefits under a federal program and had received confirmed job offers in another part of the province. When no form of assistance appeared available from federal programs to move them there, the woman working on the couple's behalf decided to try the provincial assistance programs. She was also prepared to drive them in her camper to cut down on expenses. However, the Ministry of Social Services and Housing refused to cover the costs and the woman complained to the Ombudsman's office.

We confirmed that the family was not eligible for assistance from the ministry so we contacted officials from the federal government who agreed to help with travel expenses. While we could not substantiate the complaint against the ministry, we were able to locate an agency able to resolve this matter. (CS87-122)

New placement did the trick

A 17-year-old girl telephoned our office. Her father had died recently and she and her step mother didn't get along well. Her step mother had signed a special care agreement for the ministry to provide another temporary home for her. The 17-year-old was experiencing difficulty in this other home, saying she was unhappy and being verbally abused.

We contacted her social worker who acknowledged the problem. He consulted with her and located a new placement. When we last spoke to the complainant, she had just completed Grade 10, had found a part-time job and was enjoying being part of her new foster parents' family.(CS87-123)

Monitor of custody sought

The Ombudsman's office often receives enquiries from people who wonder if the Ministry of Social Services and Housing can help them. Sometimes, people are reluctant to call on their own or just do not know which office to contact. The majority of our calls are from people who are dissatisfied with initial ministry response or who disagree with ministry decisions.

One such caller wanted to know if there was a way the ministry could monitor his 14-year-old son whose custody had just been awarded to his ex-wife's ex-boyfriend. The boyfriend had supported the child while living with the mother. The complainant alleged that this man was not a fit parent.

When we contacted the local ministry office, we learned that the ministry was also concerned. However, it had made a court application to supervise the custody of the boy and the application had been denied by a Supreme Court judge.

Since the ministry had no legal ability to supervise formally, all the social workers could do was to rely on community information to help monitor the child's care.(CS87-124)

Children taken from drunk mother

A report was made to the Ministry of Social Services and Housing that a six-year-old girl was not being sent to school because her mother was drinking. A social worker made a visit to her home to investigate. She found that the mother was so drunk that she could not safely look after her two young children. The social worker apprehended them.

As a result of her contact with our office, the mother was able to show the social worker that she acknowledged her problem with alcohol abuse and she had admitted herself to a residential treatment centre. The social worker and the mother agreed that the children could stay with a relative for the duration of her treatment which required a 30-day stay at the centre. The ministry's plan was to return the children to their mother under supervision for three months when she completed the treatment centre's program.(CS87-125)

Woman can call assistance office collect

A woman from the Central Interior was concerned that the amount of her income assistance cheque varied from month to month. To get information from the ministry about the varying amounts, she had to incur long distance call charges she could ill-afford to reach the ministry's office in another town.

This woman called the Ombudsman's office on its toll free line to complain about her problem. We contacted the ministy's office in this particular Interior town and were informed that collect phone calls were accepted from clients who lived in the complainant's community. The ministry reviewed her income assistance records with her. Variations in amount were the result of changes in her family unit size, declared earnings and shelter costs. These explanations were satisfactory to the complainant.(CS87-126)

B.C. Housing Management Commission

Resolved:	18
Not resolved:	-
Abandoned, withdrawn, nonjur:	2
Not substantiated	8
Declined, discontinued	-
Inquiries	3
Total number of cases closed	31
Number of cases open December 31, 1987	1

Social housing and special needs

Now that the Commission is responsible to the Ministry of Social Services and Housing, there is an increased public expectation that it will house people who have "social" housing problems. The Commission has always offered housing that is based on an applicant's need. Need is measured by obvious things, such as the applicant's current rent to income ratio, but may also include other measures, such as physical or mental health disabilities which are not adequately addressed in the applicant's private sector housing. In our experience, the Commission tries hard to serve its tenants and applicants, within the limits of the housing and subsidy programs available.

Not everyone fits into those programs, as in the case of a mother of 11 children who could not find adequate housing in a small, northern community. Because no private landlord was willing to house the family at a rent she could afford, the family had been living in the local transition house for victims of family violence for a month. This was not perfect and had the potential for disaster if the transition house had to choose between putting her out or being unable to take in its next emergency-situation family. The transition house contacted the Ombudsman's office for help to find accommodation.

With the woman's agreement, we called the Commission to see what it could do. The Commission had no homes in the area big enough for this family, but tried hard to find a way. It had a duplex, three bedrooms on each side, with one-half empty. Commission staff asked the tenants of the other half if they would be willing to move, at the Commission's expense, so this mother could use the entire duplex. Unfortunately, the tenants refused the request and

no one felt the Commission had the right to force them to move. When we last heard of this woman, she and her 11 children had moved in with her sister's family, making 19 children in one home. We are continuing to monitor their situation.(CS87-146)

More than one mouse in one house

A woman phoned us concerned that the Commission was ignoring tenants' complaints about mice in her apartment complex. She said the mice were even appearing on the second and third floors of the building. She also said that tenants were only being told by Commission staff to "cover your food and leave nothing around, then the mice will move on." She interpreted this as a slur on tenants' housekeeping standards and as a sign that the Commission did not care.

When we checked into this, we learned that the whole district was suffering this problem. Construction in the area had disturbed the mice's usual habitat and they were on the move, looking for new homes; hence, the advice to provide an unattractive habitat. We also learned that the Commission had already let a contract for fumigation but did not want the tenants to depend on this because health officals were doubtful that pest control would work. Our complainant felt a lot better about the whole thing once she realized no one was accusing her of sloppy housekeeping.(CS87-147)

Zealous caretakers see the light

Little things can make a big difference to people's feelings about the way they are treated.

In a B.C. Housing Management Commission senior citizen's complex in the Interior, resident caretakers were reportedly behaving in an excessively restrictive way. They would go into the common room and switch off lights even when the room was in use. Many of the tenants, all of whom are older, have poor eyesight and need the lights on to knit or play cards. Just as important was the fact that the tenants felt accused of profligacy and abusing the facility. Some were so intimidated, they quit using the room. This apparently made things worse, because the caretakers then said the room was not to be used by groups of less than six.

The Commission was quick to see the situation from the tenants' point of view and to respond to it. The regional manager made sure that the caretakers understood that this room was for the tenants to enjoy. Any use was okay as long as safety, noise levels and the potential for damage were not at issue.(CS87-148)

Ministry of Tourism, Recreation and Culture

Resolved:	1
Not resolved:	-
Abandoned, withdrawn, nonjur:	
Not substantiated	-
Declined, discontinued	-
Inquiries	-
Total number of cases closed	1
Number of cases open December 31, 1987	-

Meeting nets athlete funding

A young athlete was out of funds and had to depend on friends and acquaintances for food, shelter and opportunities to continue training. In the past, he won an Olympic bronze medal in his particular sport but he lost federal funding because of an injury. Provincial funding was only available through the B.C. Amateur Athletic Association but there had been differences of opinion in the past between this young man and the association. He complained to the Ombudsman's office that he had to go through the association to receive provincial funding to which he felt entitled.

We met with representatives of the Ministry of Tourism, Recreation and Culture to discuss the matter. We were told that the ministry, because of the sheer volume of participants, is not able to deal with individuals. Approximately 660,000 British Columbians are involved in amateur sports. However, the ministry offered to set up a meeting between association officials, Ministry representatives and the complainant. The meeting was to give the complainant an opportunity for a complete and unbiased hearing at which he could present his future training and competition plans.

As a result of that meeting, the association and the complainant arrived at an agreement about his future training plans. With this out of the way, the association also appropriated funding to the complainant under the B.C. Best Ever '88 Program.(CS87-127)

Ministry of Transportation and Highways

With its continuous program of highway development and safety improvement, the Ministry of Transportation and Highways maintains a high public profile. Complaints often involve compensation for land acquisition and remedial work where construction affects driveways or drainage. A good working relationship between the Ombudsman's office and the ministry continues with the goal being to address each issue as quickly and as reasonably as circumstances allow.

Resolved:	93
Not resolved:	1
Abandoned, withdrawn, nonjur:	23
Not substantiated	75
Declined, discontinued	37
Inquiries	16
Total number of cases closed	245
Number of cases open December 31, 1987	40

Equipment not powerful enough

A contractor hired out a piece of road building equipment to the Ministry of Tranportation and Highways, but after three weeks, the ministry released the machine as inadequate for the work. The owner subsequently complained to the Ombudsman's office, claiming that he had lost the contract unfairly and that the ministry was wasting money by hiring equipment that was more powerful, and more expensive, than necessary for the job.

In our investigation, we found that the contractor and the ministry disagreed on questions of the equipment's capabilities - its power, age and hydraulic capacity. The owner conceded some points but claimed that these were offset by a lower hourly cost.

The ministry contended that, while some parts of a project were within the machine's capabilities, these were infrequent and interspersed throughout the overall job. Construction of highways calls for a coordinated use of all hired and ministry equipment for blasting, loading, hauling and levelling. Slow downs in one area slowed the whole project. This machine's insufficient capacity was slowing down work, ministry officials told us. It therefore became more cost effective to have those infrequent, interspersed aspects done with "over-powered" equipment than to use a piece of equipment that could only handle those jobs.

Our review of the complaint concluded that the ministry's position was justified.(CS87-128)

'Road closed' sign in wrong place

In an effort to keep the travelling public well-informed, the Ministry of Transportation and Highways installed a computerized road information sign on the edge of a small community in the Coquihalla system. This sign included a 'road closed' announcement when necessary, due to heavy snowfall or other eventualities.

Unfortunately, the location of the sign tended to obliterate a motel sign and the motel's owner felt it was located at a point that would cause traffic to turn back when the 'road closed' message was activated before going the short distance extra to his motel. The owner felt the sign caused him a loss of business and discriminated against his service. Unsatisfied with the response from the ministry, he complained to the Ombudsman.

We reviewed the problem with the ministry officials and they agreed to consider a relocation of the sign once the frost was out of the ground in the spring of 1987. The sign was subsequently moved to a point beyond his motel. (CS87-129)

Truckers put brakes on auto-debit

A man in the trucking business became concerned when the Ministry of Transportation and Highways sent him a notice of changes in the method used to collect fees for weigh scale permits.

The Motor Vehicle Department sought authorization for direct access to truckers' bank accounts similar to pre-arranged payments for some utilities and mortgages. In many instances, truckers had no time to review the weigh scale account for accuracy before charges would be deducted from their bank accounts on the 10th of each month.

When this trucker complained to the Ombudsman's office, we brought his concerns to the attention of the Motor Vehicle Department administration. It agreed to accommodate the industry by moving the billing date to the 20th of each month. The complainant decided to give the system a try.(CS87-130)

Reneged on purchase deal

From a number of viable options, the Ministry of Transportation and Highways selected a new highway route that would cross arable farmland and a farm house. The farm owners were willing to relocate and since the ministry wanted to start work quickly, the owners chose a new location, purchased property and engaged a contractor who started to build immediately.

Unforeseen complications resulted in a change in the new highway route. The farm or the residence were no longer needed. The new route was to be some distance away to one side of the farm on non-

arable land. Ministry officials told the farm owners their arable land and farm house would not be purchased.

Having already started to build elsewhere, the owners now faced a dilemma and sought Ombudsman assistance. We reviewed the case with Highways officials and found they readily accepted that the ministry had an obligation either to buy the farm as originally proposed or to compensate the owners for costs incurred with the new home. The ministry gave the owners the choice. The family chose to sell the farm and relocate.

The Ombudsman's office also became involved in negotiating the price for the farm, since there was a large difference between the price sought and the price offered. With the cooperation from both parties, we took account of the factors important to them and established a reasonable price range for the property. The two sides chose to negotiate directly with some involvement from our office and finally settled within that price range.(CS87-131)

Motor Vehicle Department

The Superintendent of Motor Vehicles is responsible for three main divisions: Driver Licence Division which manages more than 2.3 million driver licences, the Vehicle Licence Division which administers the registration and licensing of all motor vehicles in British Columbia and the Commercial Transport Division which regulates commercial traffic. The majority of complaints concern the status of individual driver's licences. The Ombudsman is able to respond to most complaints quickly due to the ministry's cooperation and assistance.

Drivers' licences and other languages

The Ombudsman's Office continues to receive a number of complaints about the driver's licence examinations of the Motor Vehicle Department in the Ministry of Transportation and Highways. The branch does not have motor safety study material in French, Cantonese, Spanish or other languages which, we are told, puts some applicants at a decided disadvantage when having to write the exam in English. Motor Vehicle Department officials have indicated to us that they do not view it as part of their mandate to provide study materials in a variety of languages. The department will, however, permit people who are writing the multiple-choice examination for the Class 5 licence to have a translator of their own choosing present at their own expense. This is not permitted, however, for professional class drivers' licences.(CS87-132)

Woman wanted to use maiden name

A former Alberta resident complained that the local motor licence office in B.C. refused to issue her a B.C. driver's licence in her maiden name, although she was recently divorced in Alberta. She was told that the name on her birth certificate, which had been changed to her married name, was her legal name because her divorce decree did not include any reference to reversion to her maiden name. The woman asserted that in Alberta she would automatically have the right to use her maiden name after a divorce. To be able to drive, she accepted a driver's licence with the surname of her ex-husband. The woman felt that she had been unfairly treated. Furthermore, she described her treatment by the local official as "rude and insensitive."

When this woman complained to the Ombudsman's office, we contacted the executive director of the Vital Statistics Division, who confirmed that the complainant had the right to use her maiden name. By coincidence, the executive director had formerly been the director of Vital Statistics in Alberta and he agreed with the woman's understanding of Alberta law.

When contacted by our office, the manager of the Driver Licence Division said the local office had misinterpreted policy on reversion to a maiden name. The manager offered to provide necessary clarification to staff and further directed that the complainant be issued a new driver's licence in her maiden name, free of charge.(CS87-133)

Policy changed on use of maiden name

In 1985, a former Manitoba resident complained to the Ombudsman that she could not obtain a B.C. driver's licence in her maiden name, even though she had been divorced five years previously and had used her maiden name since her divorce.

We contacted Motor Vehicle Department headquarters to discuss this case. The department's policy at that time provided that a woman could obtain a driver's licence in her maiden name only if she was married prior to 1977 amendments to the *Name Act*. The department required a woman's birth certificate and marriage certificate to prove her identity and the date of marriage. If they were unavailable or if a woman was married after September, 1977, she could not obtain a driver's licence in her maiden name without either a formal change of name application through the Vital Statistics Division or an order on her decree of divorce changing her name.

The complainant objected that her Manitoba lawyer advised her at the time of her divorce that no special order was required to entitle her to revert to her maiden name. Though she was married before 1977, she had not retained a copy of her marriage

certificate. She said she would attempt to obtain it. However, she felt that the Motor Vehicle Department should not require her to obtain a driver's licence in a name which she renounced at the time of her divorce five years earlier.

The Motor Vehicle Department had previously amended its policy on the use of maiden names for women married prior to September, 1977 subsequent to an earlier investigation by this office. The circumstances of this case led us to ask why the department could not adopt a policy which permitted all married or divorced women to revert to the use of a maiden surname. We reviewed legal opinions formerly prepared on this issue and came to the legal opinion that a woman's common-law right to revert to the use of her maiden name had not been abrogated by the 1977 amendments to the *Name Act*.

After receiving our representations, the Motor Vehicle Department consulted with legal counsel and with the Department of Vital Statistics in the Ministry of Health. Subsequently, it amended existing policy to permit a woman, whether married or divorced, to revert to the use of a maiden surname at any time, upon the provision of satisfactory proof of identity. The Department's new policy went further to provide for the issuance of a driver's licence in a woman's maiden and married surnames upon request.

This complaint was under investigation for almost two years. However, the complainant was patient and pleased to learn the Motor Vehicle Department's new policy came about as a result of her complaint.(CS87-134)

B.C. Ferry Corporation

An efficient and effective program exists to attend to complaints lodged against the B.C. Ferry Corporation. Issues are discussed directly with the senior level of management which permits a speedy determination of the facts. This allows for an accurate evaluation of a complaint upon which the fairest decision can be made.

Resolved:	4
Not resolved:	1
Abandoned, withdrawn, nonjur:	1
Not substantiated	30
Declined, discontinued	-
Inquiries	-
Total number of cases closed	36
Number of cases open December 31, 1987	1

Ferry service change draws fire

Following a change in ferry service between Campbell River and Quadra Island, the Obmudsman's office received 23 complaints about the new service. B.C. Ferry Corporation had replaced two vessels previously operating on a half-hourly schedule, each with a capacity of 30 vehicles, with a single 50-vehicle vessel, the North Island Princess, operating on an hourly schedule.

Individual complainants asserted that the new vessel was too small, unsafe or too slow. Commuters who used the service to go to work and school complained that a missed ferry due to overload would mean hour-long waits. The substance of all 23 complaints was that the new service was inadequate.

In discussing the complaints with B.C. Ferry Corporation staff, we were told the corporation's goal is to match a vessel to the public demand of a route, given that the corporation has a fixed number of vessels, a fixed number of routes, a variety of public demands to satisfy and a program of vessel maintenance.

Our analysis of the management and operating procedures concluded that the process used to assign vessels is a reasonable one, in light of the corporation's need to balance demand with limited resources and financial accountability. The North Island Princess was placed on the Campbell River-Quadra Island route based on statistical data, experience and other exigencies. The load figures available showed little or no increase in overload waits in the first six weeks of the North Island Princess operation.

Although complaints about assignment of this vessel could not be supported, there remains the potential of inconvenience to those who use the ferry for work or school. Any waits are now an hour long which could create more problems where deadlines were involved. The options for these people are to either start out earlier or go on the ferry as a foot passenger, neither of which may be a viable alternative. (CS87-135)

British Columbia Council of Human Rights

In 1987, our office received six complaints against the council, five of which we either declined to investigate or subsequently found to be unsubstantiated after our investigation was completed. One of those unsubstantiated is described below. The remaining complaint, which we classified as resolved during investigation, involved a person who had felt a little apprehensive about one of the council members whom he thought would be conducting the hearing into his complaint. According to the complainant, the two had tangled verbally during a telephone call and he was worried to learn the same person might be deciding on the validity of his complaint. We interviewed all concerned and we were completely satisfied that there was no instance of bias or unfairness on the part of the council member. To allay any further concerns in this area, the complainant's hearing was scheduled to be conducted by another council member.(CS87-143)

Resolved:	1
Not resolved:	-
Abandoned, withdrawn, nonjur:	-
Not substantiated	4
Declined, discontinued	1
Inquiries	-
Total number of cases closed	6
Number of cases open December 31, 1987	1

Concerns over IRO unfounded

A woman contended that she had been unfairly treated by the British Columbia Council of Human Rights because of the appointment of a particular industrial relations officer (IRO) to investigate her complaint of sexual harrassment by a previous employer. The reason? She said she had observed the IRO conversing with her former employer on a previous matter in a foreign language. She was of the opinion that they were friends and felt she would not get a fair shake from that particular officer. She subsequently approached the Ombudsman's office.

In response to our inquiries, the council took the position that the IRO merely investigates a case and has no decision-making authority. The officer submits the investigation report to the council which in turn provides a summary to all of the interested parties. If there are any problems with the report's content, the complainant has the opportunity to challenge the facts raised during the investigation. Furthermore, once the report is acceptable to all concerned, it is up to the council to make the decision whether to proceed to a hearing or not. The IRO has no part in the decision. If the matter proceeds to a hearing then the complainant has further opportunity for challenge and rebuttal.

In our discussion with the council, we were told investigators are advised to deal with all parties in an open and cooperative manner. That is exactly what the officer did in the episode to which this woman referred, which revolved around a pay investigation. According to the Human Rights Council, the IRO's relationship with the employer was purely professional in nature and would not in any way have a negative effect on the former employer's complaint.

The Human Rights Council supervisor we spoke to went on to explain that there were only two IROs in that particular area. To substitute the IRO in question for another when, in their opinion, there was no adequate reason to do so would set an undesirable precedent.

We suggested that in order to allay the complainant's concerns, she have counsel present whenever she is being interviewed by a council staff member during the complaint investigation process. While we were not able to substantiate the complaint, we nevertheless requested that the council forward a copy of all correspondence on this matter to us until it reached a conclusion.(CS87-144)

British Columbia Hydro and Power Authority

In 1987, our office handled 237 complaints against this authority. Again, as in past years, the majority of the complaints concerned some aspect of B.C. Hydro's collection of unpaid residential accounts. Our major focus involved the Hydro Collections System Study, details of which are outlined below. In addition to the study, there were a range of other complaints against the corporation, several of which are also outlined below.

Resolved:	128
Not resolved:	-
Abandoned, withdrawn, nonjur:	6
Not substantiated	45
Declined, discontinued	47
Inquiries	11
Total number of cases closed	237
Number of cases open December 31, 1987	18

System's Study of Hydro's Collection of Residential Accounts

In 1987, our office, with the extensive participation of B.C. Hydro, conducted a study of Hydro's practices regarding the collection of residential accounts.

The study was initiated jointly by the Ombudsman and the president of B.C. Hydro. Having agreed on the value of an external perspective, the Ombudsman was invited to conduct a systematic review of the fairness of Hydro's collections operations.

This study focuses on the two major functions performed by B.C. Hydro collection personnel: determining responsibility for outstanding accounts; and taking collection action on those accounts.

The need for such a study arose primarily from our observation that the same types of complaints have recurred in spite of the high resolution rate of individual cases. Furthermore, the volume of these recurrent complaints imposed a significant drain on Ombudsman resources which, we believed, could be largely reduced with improvements in Hydro's decision-making and review procedures.

The objectives of the study were to:

i) describe selected features of Hydro's current collection practices;
ii) examine the reasons that Hydro personnel use to support those practices;
iii) evaluate the legality and fairness of those practices and reasons;
iv) make proposals for the enhancement of a comprehensive, fair, and legally sound written policy and procedure; and
v) propose ways of increasing the effectiveness of Hydro's collection system.

Data for the study was obtained from the following sources:

i) a systematic review of Ombudsman collection complaint files for the 1985 and 1986 calendar years;
ii) documents obtained from B.C. Hydro including all written policies and procedures pertaining to the collection of residential accounts;
iii) interviews with key Hydro personnel at Head Office and selected interviews with District Office personnel;
iv) questionnaire responses from 273 district office staff engaged in collection work;
v) interviews with, and questionnaire responses from, 31 financial assistance workers with the Ministry of Social Services and Housing concerning their experiences with Hydro collection practices; and
vi) the statute and case law relevant to the performance of collection functions.

The main findings of the study were:

i) the degree of variation in collection practices, particularly concerning the assessment of liability for accounts, is considerable;
ii) it would appear that a significant proportion of collection staff could benefit from greater knowledge of relevant law and policy related to their work;
iii) the current written policies and procedures concerning collections are not sufficiently complete to provide the guidance necessary to ensure fair and equal treatment of all Hydro customers;
iv) collection success might be improved with certain enhancements to account management procedures; and
v) Hydro has the personnel resources to handle a higher proportion of complaints and disputes without the need for third party intervention, but it lacks the appropiate formal procedures.

The Ombudsman's research concluded with the following recommendations:

i) A comprehensive, consolidated policy and procedure manual should be developed to ensure that collection practice is consistent and legally sound;
ii) Where there is room for discretion, clearer guidelines should be developed to ensure that all customers are treated fairly;
iii) Hydro should consider seeking a clarification and possible extension of its legal powers to enhance the effectiveness of its collection operation;
iv) Hydro should improve its account management practices and its legal authority to facilitate collection from those who benefit from service;

v) Following the completion of a comprehensive policy and procedure manual, a regular training program for all personnel engaged in collection work should be instituted;

vi) Hydro should provide more visible and accessible procedures at head office and district offices for the handling of complaints and disputes concerning responsibility for accounts; and

vii) A clear statement of the terms and conditions under which service is provided, including all relevant sections of the policy and procedure manuals, should be available to all Hydro customers.

Hydro's Action Plan

B.C. Hydro has accepted virtually all of the Ombudsman's recommendations and has developed a detailed Act n Plan to provide for the implementation of the necessary changes over the next few months.

Following is a summary of the main points in Hydro's Action Plan:

In response to the recommendations Hydro will:

A. Recommend the tariffs be revised in order to clarify the relationship between Hydro and premises owners or operators, recognizing that there is an on-going relationship between Hydro, as a supplier of energy to a premises, and the owner or operator, who ultimately is responsible for the care and control of the premises, as follows:

1. as a condition of service to rental premises, an owner or operator who wishes Hydro to consider dealing directly with a tenant or tenants may be required to enter into an agreement with Hydro which provides for responsibilities of the owner or operator in relation to payment for service used in the premises; and

2. notwithstanding any agreement to deal directly with the tenant or tenants as a customer of Hydro, for reasons such as when the rate of tenancy turnover or rate of uncollectable losses exceed tolerable levels, or when a tenant-customer fails to provide and maintain the service used in common by other tenants who have separate tenancy agreements with the owner, or when a tenant-customer refuses access to Hydro's meters, Hydro may, at its sole option at any time and from time to time, deal directly with the owner or operator as a customer of Hydro.

B. Recommend the tariffs be revised with respect to co-occupants as follows:

1. Hydro may refuse to provide service to an applicant or customer who occupies the premises with another occupant who has an outstanding account incurred for service while occupying any premises at the same as the applicant or customer.

C. Recommend the tariffs be revised, based on the principle that a creditor is entitled to know who it is dealing with, as follows: that Hydro, as a creditor and a supplier of a service, may at any time require an applicant or customer to provide reference information and identification.

D. Revise and redevelop the collection policy and procedure manual and develop a formal employee training program.

E. Implement immediate changes to collection procedure where necessary. For example:

1. the use of archaic or legally unsound "rules of thumb" to determine liability for unpaid bills;

2. the transfer of bills between co-tenants where common responsibility does not exist;

3. the separation of the "liability investigation" process from the "collection process";

4. the discontinuation of the practise of threatening disconnection where disconnection is not authorized by the tariff.

F. Create a Credit Services Review Committee which will:

1. review proposed changes affecting customers and make recommendations as appropiate;

2. advise on the development and implementation of new changing customer service related procedures;

3. review classes of complaints and recommend needed changes which become apparent as a result of the review process;

4. advise on the redevelopment of a comprehensive collection policy manual and employee training program;

5. advise on the development of information brochures for new customers explaining service conditions and requirements;

6. assist in the development of a dispute resolution process.

G. Develop a formal dispute resolution process using local, regional and head office credit and collection specialists to resolve customer complaints.

H. Improve communication with customers by:

1. developing policy brochures for all customers and an information package for new customers;

2. informing customers of the dispute resolution process;

3. consolidating billing and collection notices to the extent possible and making bills more informative.

I. In conjunction with the Ministry of Social Services and Housing, develop and implement a revised policy and prodedure for treatment of customers on GAIN allowances.

J. Review proposals for billing customers monthly.

K. Review alternative account management practices.

Throughout the course of the study, the Ombudsman's office was impressed by B.C. Hydro's commitment to improving customer services. This has included a recent reorganization to create a separate customer service department under a vice-president, enhanced sensitivity to the economic impact on low income customers, and a dedication to fair and open relations with the public.

This joint initiative demonstrates the value of combining the independent perspective of the Ombudsman's office on administrative fairness with the field experience of the public authority. The results are designed to achieve both individual fairness and corporate objectives.

Hydro bill on vacant building contested

A woman owned a building that had been placed in the hands of a receiver for an eight-month period. Prior to the eight-month period, she asked Hydro to maintain the service to the property in the expectation that she would regain ownership of it. Eventually she did. Hydro then held her responsible for the outstanding Hydro account on the vacant building, in which some heat and light had been used during the vacancy period. The woman contended that she was not responsible as the building was in receivership during that period and the receiver should pay. She approached the Ombudsman's office when Hydro persisted.

In our investigation, we found the complainant had maintained the service to avoid an inspection and the cost of an inspection when she resumed ownership. It was, therefore, for her benefit. Hydro reasonably relied on her request for service and there is no suggestion that the service was to be provided gratuitously. The failure of the complainant to have the breakers shut off was not Hydro's problem. We also concluded that the receiver could not be held liable for these charges. The receiver had no knowledge of them, did not benefit from the service and did nothing to cause the complainant to incur the charges.

Considering all of these factors, we concluded that the complaint was not substantiated.(CS87-136)

Poor repair work source of dispute

A couple living on Vancouver Island had their power knocked out during a storm. There were problems getting a Hydro crew out to repair the damage to their line because of a labour dispute. However, four hours after the power failure, a crew arrived, made repairs and reconnected their power. The resident, a professional contractor for 30 years, noticed the crew had left the wires rubbing against the side of the house and a tree in the middle of their lawn. He pointed out the fault and was told by the repair crew that the job would be done properly after the strike but not that same night as they were too busy.

Time went by and after hearing nothing from Hydro, the man called to see when the line would be repaired. A Hydro representative came out to inspect the line. He refused to believe that Hydro crews would have done such a poor and illegal job and blamed the customer for the shoddy workmanship. The couple contacted our office to voice their concerns about the manner in which the Hydro representative had refused to believe their version of the circumstances. He treated them like children, according to the complainants, and, to add insult to injury, they were held responsible for the repair costs to fix the line.

We contacted B.C. Hydro head office and the complaint was relayed to the local area manager. He investigated the matter and, finding the complainants' version accurate, dispatched a crew to repair the line at no cost to the couple. He also wrote them with an explanation and an apology on behalf of B.C. Hydro. The complainants were satisfied and we closed the file as resolved.(CS87-137)

Late doctor's report meant late Hydro bill

A man's long-term disability payments were discontinued in error. As a result, his payment of bills was disrupted and his Hydro account fell into arrears. His disability payments were eventually reinstated but his cheques were not being issued by the insurance company. The man kept telling Hydro he would pay by a certain date but then the cheque would not arrive and he would be given a further extension by Hydro. Hydro eventually questioned their customer's sincerity and demanded payment with no further extensions.

The man approached the Ombudsman's office for help. We contacted the insurance company in Alberta and confirmed that the payments had been held up by a late doctor's report. We were assured that a cheque was being issued immediately and would be sent on the next Greyhound Bus to avoid any further delay. We contacted Hydro with this information and officials agreed to wait until the man received his cheque.(CS87-138)

Trying to collect girlfriend's debt

A man's service had been discontinued by B.C. Hydro because of an outstanding debt in his girlfriend's name. He and his girlfriend were living together at the current address but they had not lived together at the address where the girlfriend had incurred the debt.

The man sought the Ombudsman's help in dealing with Hydro. We contacted the Hydro office in ques-

tion and suggested that the complainant could not be held responsible for his girlfriend's debt from a former address. The matter was checked with head office and the regional office was instructed to discontinue collection action on the complainant's account.(CS87-139)

High bill may mean hazard

A woman contacted the Ombudsman's office after her monthly Equal Payment Plan instalments with B.C. Hydro continued to increase, almost doubling in the two years she lived in the residence. She could not understand how she could be consuming so much power.

B.C. Hydro installed a new meter and when this did nothing to change the situation, Hydro assisted the woman in trying to pinpoint the power drain. Hydro eventually told her that she must talk to her landlord about what appeared to be a problem with the wiring. The complainant was not happy with this and thought Hydro should be doing more to assist her.

We found Hydro's position to be quite reasonable. The house was approximately 25 years old and the woman admitted that she had constant problems with light bulbs burning out prematurely and appliance plugs being damaged in the electrical outlets. All these things pointed to an electrical problem which was solely the owner's responsibility.

We suggested to the woman that she contact the Provincial Electrical Inspector's office should the owner not wish to cooperate as she may have been putting herself and her family at risk of fire.(CS87-140)

Failed to cancel Hydro account

B.C. Hydro held a man responsible for outstanding arrears from three separate past accounts. He agreed that he was responsible for two of the accounts but not the third. He said that the third account was the responsibility of some former tenants who had rented while he was still the owner. B.C. Hydro argued that the account had never been taken out of the owner's name and therefore he was responsible for the bill. The owner contacted the Ombudsman's office for help.

The complainant agreed that he had not formally advised B.C. Hydro to cancel his account but instead left it up to the new tenants to open a new one. The owner never contacted B.C.Hydro to confirm the change and the tenant never paid the bill left outstanding at the the time he moved out. The owner was unable to provide any proof of the tenant's occupancy, such as a rental agreement, and did not know the whereabouts of the former tenants.

Under these circumstances, we were unable to support his complaint. As the owner of the house at the time, he had a responsibility to ensure that the Hydro account was taken out of his name and put in the names of the new tenants. He eventually made payment arrangements with Hydro for the entire bill.(CS87-141)

Service continued after cancellation

A man moved out of his home because he could no longer afford the mortgage. He phoned B.C. Hydro and asked that the account be taken out of his name. This was done. However, not realizing that the customer was also the owner, B.C. Hydro did not disconnect the meter thinking the owner would rent the house to new tenants. After the account remained vacant for several months, B.C. Hydro checked and found that the former customer had also been the owner. He was promptly billed for service from the date he vacated the house. The man then called Hydro and had the service disconnected altogether but complained to us about the billing.

We could not substantiate his complaint, concluding Hydro's actions were reasonable. Residences are never disconnected completely unless the owner requests it, especially in northern areas in winter where the loss of Hydro could mean costly damage to water pipes.

The man was on social assistance and unable to pay the bill but the Ministry of Social Services and Housing agreed to help him out when we explained the situation.(CS87-142)

British Columbia Transit Authority

In 1987, our office handled seven complaints against this authority. Our requests to B.C. Transit for investigative assistance and information are always promptly answered. We appreciate this authority's quick and courteous response.

The major focus of our office's involvement with this authority in 1987 was the SkyTrain Report which is outlined below and in the general section to this report. The case summaries give an idea of the variation of complaints normally received regarding B.C. Transit.

Resolved:	1
Not resolved:	-
Abandoned, withdrawn, nonjur:	-
Not substantiated	6
Declined, discontinued	2
Inquiries	-
Total number of cases closed	9
Number of cases open December 31, 1987	6

SkyTrain Report

In 1987, the Ombudsman's office undertook a comprehensive investigation of the impact of the new ALRT system, SkyTrain, on adjacent residential neighbourhoods. Our purpose was to offer fair, effective recommendations which would promote co-operative problem-solving among all interested parties and thereby avoid the necessity of lawsuits. The three municipalities and B.C. Transit were very generous in their assistance and cooperation with our investigation. We also appreciated the warm welcome we received from those individuals who invited us to experience Skytrain from their homes. The result of our investigation is Public Report #8, the SkyTrain Report, published in November 1987. The report identified the predominant negative effects to residents as being loss of privacy, blocking of sun by the overhead track, loss of views, excessive noise and a concomitant decrease in property enjoyment and value. We recognize that the quality and character of neighbourhoods are never static in growing urban centres and that residents accept some negative changes as an inevitable trade-off for the many benefits of urban living. However, as a general principle of fairness applicable to all public institutions, a minority of individuals should not have to bear a disproportionate share of the negative effects of any public undertaking. In conjunction with this principle, we found that B.C. Transit had a duty to act fairly to individual residents and to the communities as a whole through which SkyTrain passes. This duty extends beyond its statutory responsibility to build safe transportation systems.

Building upon these principles as a foundation for the enhancement of SkyTrains's integration in the residential neighbourhoods, we made recommendations which, if implemented, would minimize SkyTrain's negative effects and maximize its potential benefits. B.C. Transit has responded positively to our report and accepted its recommendations.

Policy blocks hiring relatives

A man moved to Victoria from elsewhere in the province with the intention of becoming a bus driver. Driving a bus had been his ambition for a long time and he thought he would be good at the job. When he applied, he was told that he could not work for B.C. Transit because of his half-brother's position in the company. B.C. Transit's policy stipulates that persons are not to be hired for positions where an immediate relative already employed by the company could approve their employment, transfer, promotion or discipline. The complainant's half-brother occupied such a position.

The man complained to the Ombudsman's office believing the policy to be unfair. We set up a meeting for him with an official of B.C. Transit to discuss the problem but, as far as he was concerned, nothing positive came out of the meeting.

Later in the year, B.C. Transit became Metro Transit, and the complainant once again approached our office, hoping that changes in the organization also meant changes in hiring policy. However, Metro Transit took over this particular policy from its predecessor without any changes.

We found Metro Transit's policy to be neither inappropriate nor discriminatory but rather designed to protect against nepotism. Therefore, we could not substantiate this complaint. (CS87-149)

Parking lot next door a nuisance

The property next to a Vancouver man's property had been purchased for the Skytrain. The house on the property was bulldozed and the lot left vacant. The property owner claimed the lot was leased to a parking company by B.C. Transit and he subsequently complained to B.C. Transit about numerous problems associated with the parking lot next door, such as car fumes, noise, destruction of his fence and garbage dumping. However, nothing was ever done and this man finally contacted the Ombudsman's office for help.

When we approached B.C. Transit, officials said they had met and talked with the complainant on several occasions regarding his concerns about the property. They indicated to him that they were in the

process of removing all illegally parked vehicles and providing barricades so that no other vehicles could have access to the property.

Regarding the complainant's comment about destruction of his fence, B.C. Transit's property manager had visited the site and inspected the fence. He reported that ". . .all of the cars were two or three feet away from the fence which was in an extremely dilapidated condition (rotted posts, many pickets missing, unpainted, buckled in both directions). . ." The complainant had previously asked for compensation for the "damaged" fence on three occasions and B.C. Transit had refused to pay.

B.C. Transit went on to state that the property in question had never been leased to a parking company as claimed by the complainant. It was sitting empty awaiting word from city hall regarding zoning of the property. We relayed the information we had obtained from B.C. Transit to the complainant and requested he contact us with any rebuttal. He did not respond and his case was closed. (CS87-150)

Ample opportunity for public input

The Ombudsman's office received a complaint from a woman who claimed that there was insufficient public input prior to changes to the bus route along Patterson Avenue in Burnaby in 1986.

In our investigation of the issue, B.C. Transit stated that the Patterson Avenue bus route was included in the Bus/Skytrain Integration Plan done in consultation with B.C. Transit officials and Burnaby municipal staff and council. Discussions leading to the final plan commenced in the fall of 1984 and continued until the summer of 1985. Burnaby council received a number of reports regarding the Service Plan Program and debated the merits of the various options at open council meetings.

As well, B.C. Transit conducted a series of "open houses", advertised in newspapers, at a number of Skytrain stations during the summer of 1985 to provide the public with general information regarding the new rapid transit system. Maps of the proposed bus route network were on display and staff were available to answer questions regarding the proposed service changes. According to B.C. Transit, the open houses held at Metrotown and Royal Oak stations would have been appropriate for residents of South Burnaby.

On the Patterson Avenue bus route, Burnaby council had a number of representations from residents prior to implementation. Delegations opposed to the bus route were given the opportunity to appear before council to express their concerns. However, Burnaby council chose to go ahead with the change.

We concluded that there had been ample opportunity for public input in the planning stages of the bus route changes. As well as the foregoing, there were also newspaper ads that publicized the overall Bus/Skytrain Integration Plan prior to the schedules becoming operational. In subsequent conversations with the complainant, it appeared the new bus route had been less disruptive than she originally thought it might be. However, we suggested to her that if she still wanted changes made to the route, to address her concerns to the Burnaby council. (CS87-151)

Industrial Relations Council

In July 1987, the *Industrial Relations Act* was proclaimed into law, replacing the old B.C. *Labour Code*. The Labour Relations Board was replaced by the new Industrial Relations Council, Industrial Relations Adjudication Division.

In 1987, the majority of the 16 complaints against the board/council centred around the amount of time it took to process applications or on a problem the complainant had with the content of a council decision or appeal.

We continue to enjoy the cooperation of the staff of the council and our requests for information and/or advice are expedited.

Resolved:	2
Not resolved:	-
Abandoned, withdrawn, nonjur:	-
Not substantiated	7
Declined, discontinued	7
Inquiries	-
Total number of cases closed	16
Number of cases open December 31, 1987	6

Same people through appeal levels?

A man contacted our office to voice two concerns about the Labour Relations Board. He claimed that the board was taking too long to settle a dispute and that the several appeals on the matter had little chance of success because the same panel members heard all of them.

With respect to the time factor, we told the complainant that there is no fixed schedule for a case going through the board's process. Cases vary in complexity, the number of parties involved and the time lag in submissions required from them. The number of cases that have to be scheduled by the board in any given period also varies and many other factors that cause delay are not within the board's control. As long as there are no unjustifiable gaps in the process and as long as the board follows established criteria, it is difficult to criticize the time involved in its dispute resolution process. In this particular case, we could not find any unjustifiable delays on the part of the board.

On the second complaint, our review of the case revealed that the same panel did not hear all of the various appeals. The original decision was made in 1985. The initial reconsideration panel was chaired by someone else in 1986 and the second appeal was chaired by a third person in 1987. There did not appear to be any validity to his argument that all of the appeals were heard by the same panel members.

In view of the information obtained, we were unable to substantiate his complaint.(CS87-152)

Can't deal with threats

A union employee was temporarily placed in charge of a work crew as acting foreman. A fellow worker refused to take orders from the acting boss and this refusal served as the catalyst for a long-standing feud between the two men that culminated with a threat of dire consequences against the acting foreman.

The acting foreman tried to resolve the threat problem through his employer, his union and the police, to no avail. He contacted our office in early 1986 and was advised at that time that since the police were apparently unable to assist him, any resolution to his problem was best resolved through his union or his employer. He was told that our office had no role to play in his complaint at that time.

In 1987, he again contacted our office, this time to complain that the Labour Relations Board would not assist him to resolve the same issue. The Labour Relations Board had taken the same position that our office had taken a year earlier.

We told the man we were declining once more to investigate his complaint as we felt neither the Labour Relations Board nor our office had a role to play in the dispute at that stage. His best resolution continued to be through his union.(CS87-153)

Insurance Corporation of B.C.

In 1987, we experienced an increase of approximately 28 per cent over 1986 in complaints requiring investigation. This is reflective of an increase in claims reported to ICBC and a lesser increase in overall complaints to the Ombudsman office in 1987.

As in previous years, we appreciated the high degree of cooperation from ICBC which is reflected in extremely high resolution rate of 80 per cent of complaints investigated. ICBC continues to distinguish itself as a public authority which responds positively to fairness concerns raised by our office.

Resolved:	170
Not resolved:	-
Abandoned, withdrawn, nonjur:	85
Not substantiated	43
Declined, discontinued	164
Inquiries	53
Total number of cases closed	515
Number of cases open December 31, 1987	45

Fair treatment for accident victims

A medical social worker approached our office with several questions and concerns regarding the coordination of services for hospitalized victims of traffic accidents.

We subsequently met with a group of social workers representing most hospitals in the Lower Mainland. While much of the dicussion focussed on patients' needs for legal services, the groups also raised a number of issues concerning the fairness of ICBC's procedures for handling bodily injury claims. Among these issues were: When should an accident victim seek legal advice? Is the victim required to sign statements? What is the role of the independent adjuster? What is the difference between no-fault benefits and claim payments in the tort system? What rehabilitation services are available? Does ICBC have access to medical information? Rather than formulating these concerns as formal complaints for investigation, our office hosted a meeting between the group of hospital social workers and representatives of ICBC in October 1987, in an effort to seek resolutions through discussion. Although ICBC representatives were able to address some of the problems raised, it was recognized that considerably more work was required to meet information needs of both professionals and traffic accident victims concerning ICBC's policies and procedures and the benefits available to bodily injury claimants.

In 1988, our office will continue to monitor ICBC's development of clearer information materials to meet these and other needs.(CS87-154)

Commercial flight covered

ICBC had arranged for the victim of a motor vehicle accident in northern B.C. to be taken by Air Ambulance to Vancouver for further investigation and treatment. However, when the Vancouver hospital concluded that the patient did not require further treatment and could return home, an ICBC adjuster refused to pay the fare because he would be travelling on a regular commercial flight. The patient had no alternative but to use a commercial airline since the Air Ambulance can only be used to transport people to or between hospitals.

The family approached the hospital social worker for help. The social worker then contacted the adjuster who explained that, since the patient was at fault in the accident, ICBC would only pay for necessary medical treatment under the no-fault accident benefits provisions. The adjuster confirmed that ICBC would not pay for a commercial flight because he did not consider it to be a necessary element of the patient's medical treatment. He also told the social worker that ICBC would cover the cost of transporting the patient by Air Ambulance if a doctor ordered it but would not pay for a commercial flight.

Following a referral procedure for hospital social workers established with the assistance of the Ombudsman's office in October, the social worker called the manager of the ICBC Public Enquiries department for assistance. Within four hours, a representative contacted the social worker, confirming that, since ICBC required the patient to travel to Vancouver for a medical assessment in the first place, the transportation was indeed part of the medical treatment and the fare for the commercial flight would be covered.(CS87-167)

Forged signatures cause problems

A woman came to the Ombudsman when ICBC held her responsible for an outstanding debt for auto insurance, even though she had never owned or insured a vehicle.

ICBC's file contained several documents signed with the woman's name: an insurance application and finance note; a copy of a cancelled cheque from her bank account; and registration transfer papers. The woman claimed she had not signed any of these documents and that her signature was forged but ICBC did not believe her.

We suggested that she report the matter to the police. ICBC then obtained a copy of the police report and requested that the woman provide samples of her signature. At our suggestion, the woman asked her bank to send copies of the signature cards for her chequing account at the time the cheque was written. At ICBC's request, the woman signed an affidavit, swearing that the signatures on the documents were not hers. ICBC accepted the woman's explanation and cleared her account.(CS87-156)

Adjuster was out of line

A woman was involved in an accident on June 12, 1987. She received a form letter from ICBC dated September 28, 1987, advising her that she was 100 per cent at fault in the accident and that she could contact the adjuster for written reasons.

The woman contacted the ICBC adjuster immediately to request a written explanation. When the adjuster refused to put the reasons for the liability assessment in writing, the woman complained to the Ombudsman. She also complained that ICBC had unreasonably delayed the handling of her claim and that the ICBC adjuster had been rude and uncooperative.

We contacted ICBC. The Claim Centre manager acknowledged that there had been an undue delay in making the liability assessment. The manager immediately wrote a letter to the woman, explaining the reasons for the liability assessment. The manager also admitted previous concern about the adjuster's attitude and conduct. Since the adjuster had been working independently with little supervision, it had been decided to transfer him to another claim centre where he could be more closely supervised. This woman's complaint reinforced the manager's decision. The claimant was impressed with ICBC's approach to the problem.(CS87-157)

Chiropractic treatments cut

A woman was receiving regular chiropractic treatments for back injuries she sustained in an accident in 1984. She was in another accident in 1986 but claimed that she walked away uninjured.

The ICBC adjuster discontinued payment for the chiropractic treatments in July 1987 on the presumption that the second accident aggravated the woman's existing problem. He asserted that the woman's condition would have to be reassessed before ICBC would pay for further treatment. In our enquiry into the matter, the adjuster acknowledged he had acted without obtaining appropriate medical information. At our suggestion, the adjuster obtained the chiropractor's prescribed treatment program from the complainant and agreed to cover the costs.

In our final conversation with the woman, she noted that the adjuster seemed to be angry that she had contacted our office but she was convinced that he would not have budged otherwise.(CS87-158)

Vehicle pulled back from scrap heap

A man had been in an accident for which he was not at fault. He wanted his vehicle repaired and gave the ICBC adjuster the name of the body shop he had chosen. The adjuster authorized a rental vehicle for the man to use in the meantime.

Some days later, the man contacted the body shop for a progress report on repairs. The body shop had not received the vehicle from ICBC. He called ICBC and was informed that his vehicle had been declared a total loss and had been towed to the salvage yard. He then complained to the Ombudsman's office about the ICBC action.

In taking this matter up with ICBC, we suggested that an adjuster should have discussed the total loss decision with the man. We also noted that ICBC should have obtained his signature on a salvage release form before ordering the towing of his vehicle to the salvage yard.

As a result of our enquiry, ICBC wrote a letter of apology to the complainant. The vehicle was retrieved and delivered to the body shop for repairs after the complainant agreed to take responsibility for any repairs not covered by the claim.(CS87-159)

ICBC suspected fraud

ICBC refused to pay a total loss theft claim made by a man for his wrecked vehicle. The man said his vehicle was stolen from the parking lot of a pub and that he had been inside the pub during the entire evening. ICBC based its denial on a suspicion that the claim was not legitimate. The man complained to the Ombudsman's office, asserting that ICBC had not interviewed several witnesses who could substantiate his account.

Because of the frequency of fraud, "total loss" theft claims are routinely investigated by ICBC's special investigation unit (SIU). In this case, SIU had not interviewed all available witnesses. Several witnesses' names and telephone numbers were provided to ICBC to corroborate the complainant's account. As a result of our inquiries, these witnesses were interviewed by ICBC and the claim was subsequently paid.(CS87-160)

One woman, several problems

A woman complained to the Ombudsman's office that she had had a series of difficulties with ICBC over a period of several months. On her first contact with our office, she complained that the ICBC adjuster handling her bodily injury claim was rude and uncooperative. In response to our queries, the adjuster's supervisor explained that the problem was due to an excessive caseload. The supervisor offered to meet with the woman personally and an adjuster from an independent firm was subsequently hired which appeared to resolve the woman's immediate concerns.

Four months later, the woman contacted our office again. Her physiotherapist had informed her that ICBC had discontinued paying for physiotherapy treatments. The woman had received no notification

to this effect from either her independent adjuster or ICBC.

We discussed the matter with an ICBC representative who questioned whether the woman was benefitting from the physiotherapy. The representative admitted that appropriate procedures for notifying the woman and the physiotherapist of the corporation's doubts had not been followed. ICBC wrote to the complainant informing her of its concerns and its intention to obtain further medical evidence to support her claim.

Six months later, the woman complained that the independent adjuster would not return the receipts for physiotherapy treatments and prescriptions which she had submitted to him to support her claim. She complained that the adjuster was difficult to contact and would not return her calls.

As a result of our inquiry, an ICBC representative from the Bodily Injuries Centre met with the woman. Her receipts were returned to her and arrangements were made for her to be examined by a specialist. Another adjuster was assigned to the claim and was instructed to be available at all times.(CS87-161)

ICBC moo-ved to re-instate discount

While driving a vehicle, a man hit a cow which had strayed onto the road. ICBC found the complainant liable and compensated the owner of the cattle. As a result, the man lost his full discount on the claim-rated scale. The man believed that the cattle owner should have been responsible for keeping his herd off the road. He complained to the Ombudsman's office that ICBC's investigation into the matter was insufficient.

ICBC had determined that the property on which the cattle were kept was classified as "open range" and that the owner was not required to provide a fence. However, our investigation found that, while one section of the land was open range, the classification of another section did require the owner to contain his animals.

The exact location of the accident was therefore significant in assessing liability. However, ICBC had failed to take statements from any of the three witnesses to the accident. The adjuster had asked the complainant to describe exactly where the accident occurred. The adjuster then attended the scene but was accompanied by the cattle owner rather than the complainant.

As a result of our involvement, ICBC's discount review committee acknowledged the inadequacy of the corporation's investigation and re-instated the complainant's full discount. (CS87-162)

Other motorist uninsured, out of province

A B.C. woman was involved in an accident caused by a Saskatchewan motorist on July 6, 1987. On July 31, 1987, the woman complained to our office that she had not heard from either of the two insurers, ICBC and Saskatchewan Government Insurance (SGI).

We contacted ICBC and were advised that it had notified SGI of the accident. SGI should have contacted the B.C. woman directly but had failed to do so. We then submitted a complaint against SGI to the Saskatchewan Ombudsman. At our request, the Saskatchewan Ombudsman's office investigated the complaint and found that SGI had correctly determined that the Saskatchewan motorist did not meet residency requirements specified in the Saskatchewan *Automobile Accident Insurance Act* and therefore did not have a valid policy.

We were able to convince ICBC that since the Saskatchewan motorist was uninsured and the accident occurred in B.C., the woman's claim should be accepted under her uninsured motorist protection which is included in Basic Compulsory Autoplan Insurance in B.C.(CS87-163)

Engineer's report misinterpreted

A man made a claim to ICBC for bodily injuries and material damages resulting from a hit-and-run. He claimed to have been rear-ended while driving home late one night. Both vehicles were in motion at the time of the impact. The other motorist drove away and the man was unable to get the license plate number. He submitted claims for neck strain and damage to his vehicle. ICBC denied both claims.

Although ICBC was skeptical about the complainant's description of the accident, it had no evidence upon which to deny the claim. The adjuster decided to request an engineer's report to verify the cause of the damage to the complainant's vehicle. ICBC was also concerned about the validity of the complainant's bodily injuries claim. ICBC sent the vehicle to an engineering firm requesting a report on the magnitude of the impact forces involved. Using scientifically sound industry standards for calculating and reporting impact forces, the engineer concluded that ". . . this vehicle has sustained an impact equivalent to backing into a fixed barrier at no greater than nine miles per hour. . . ." When ICBC subsequently denied the claim, the man approached the Ombudsman's office for assistance.

In our investigation of the matter, the engineer told us the adjuster clearly misinterpreted these findings. In his notes on the complainant's file, the adjuster had concluded ". . . damage caused by vehicle backing into barrier." He used this as a basis for denying both the bodily injury and material damage claims.

The engineer told us the adjuster had clearly requested a report on the magnitude of the collision and the corresponding necessary information was provided. He explained that to assess whether the

accident had occurred as described by the complainant, an engineer would need to know more about the actual circumstances of the accident than the adjuster provided. Accordingly, the claim could not be denied on the basis of the engineer's report alone. As a result of our investigation, ICBC accepted the complainant's claims.(CS87-164)

Engine wear or sand damage?

When a couple took their 1977 Camero in for service, the repair shop told them that the engine had been seriously damaged by sand and gravel. The couple called the police who subsequently went to the shop and took samples of debris from the engine. The couple submitted the debris to ICBC in support of a claim for vandalism.

ICBC hired a mechanic to examine the engine. He concluded that the damage was a common type of maintenance problem and was the result of long-term wear and tear. ICBC denied the claim. In response, the couple obtained a statement from the repair shop verifying that the engine had been serviced and tested four months earlier and had been found to be in good order with no potential engine problems. Nevertheless, ICBC continued to deny the claim. The couple then came to the Ombudsman's office for help.

At our request, ICBC obtained an independent laboratory report on the sample taken by the police. According to ICBC, the laboratory concluded that a foreign substance had been added to the engine, a clear indication of mischief. The couple's vandalism claim was immediately accepted.(CS87-165)

Adjuster claims too much expertise

A social worker contacted an ICBC adjuster to determine her client's eligibility for accident benefits. When the adjuster advised her that her client was not entitled to any benefits, the worker requested the name of someone in ICBC's Rehabilitation Operations Department who could confirm this. According to the social worker, the adjuster replied that he was in charge of the file and that contacting a rehabilitation representative would be a waste of energy since that representative would be reporting to him anyway.

Our investigation confirmed that the information the social worker requested was not within the adjuster's area of expertise. A supervisor acknowledged that the adjuster should have referred the social worker directly to the Rehabilitation Operations Department for an answer to her question. Furthermore, ICBC confirmed that the client was entitled to accident benefits.

The matter was resolved when the rehabilitation representative wrote to the social worker confirming the benefits available to her client. (CS87-166)

Adjuster's methods questioned

A man was found by an ICBC adjuster to be 75 per cent liable for an accident. The man complained to the Ombudsman's office about this finding.

Liability issues are often disputes over the facts of a case and are best reviewed internally by ICBC or decided upon by a court. In this case, however, the man complained that the adjuster had made procedural errors in his investigation of the facts surrounding the accident.

In reviewing the adjuster's file, we found that the statements given by the complainant and the other motorist differed as to what type of intersection the accident occurred at. Even though this was the key factor in the determination of fault, the adjuster had neither attended the scene nor made any other effort to ascertain what type of intersection it was. In addition, a written statement had not been taken from either of two witnesses. One of them gave an unofficial statement by telephone which appeared to confirm the complainant's statement but the adjuster did not appear to have considered it. Furthermore, the adjuster had obtained a copy of a court decision supporting the complainant's position on what appeared to be similar facts but apparently did not take this into consideration either.

We suggested to ICBC that the adjuster had not obtained and considered sufficient evidence upon which to base a liability assessment. As a result, ICBC hired an outside adjusting firm to re-investigate the entire claim.(CS87-155)

Workers' Compensation Board

Complaints handled by the Ombudsman's office concerning the Board have continued to increase from previous years. In 1987, we closed 925 complaints and inquiries, compared to 774 in 1986 and 737 in 1985. In 1987, of the cases that required our active involvement, 65.6 per cent of them were resolved and 32 per cent were found to be not substantiated.

In last year's annual report, we noted that some unresolved cases reported to Cabinet and to the Legislature in 1984 and 1985 were rectified, and a number were closed as not rectified. By the end of 1987, there were again a number of unresolved outstanding issues. These include:

1. A report to Cabinet concerning disagreement with the Board's determination that the benefits it paid to a fatally injured young worker's dependants represented the worker's lifetime loss.

Most commonly, workers' earnings are averaged over a one- to three-year period prior to the injury to provide the basis upon which the pension may be calculated. In normal circumstances, this use of past earnings to predict future earnings potential provides a fair representation; the one- to three-year period will illustrate the employment pattern that the worker would most likely continue to follow. As with every rule, however, there are exceptions. In this case, the worker was just 20 years of age and newly married with an infant son when he was fatally injured at work. We concluded that the use of the two-year past earnings period as a basis for determining benefits in this case was unjust because it presupposes, without supporting evidence, that this 20-year-old worker had maximized his earning potential. Moreover, it did not take account of the probability that his yearly earning capacity would have increased over his working life or the fact that the majority of individuals two years out of high school have not yet reached the peak of their earning potential.

The Commissioners maintained that the worker was more likely to revert to his previous pattern of moving around from job to job. Therefore, past earnings were an accurate reflection of his potential. We pointed to substantial evidence indicating a positive and permanent change in the worker's employment and earnings pattern. The Commissioners, however, were not convinced.

The Ombudsman's office concluded that refusal to recognize the worker's probable increase in future earnings, despite a preponderance of evidence in favour of such a probability, was unjust and indicated a standard of proof that is oppressive and impossible to meet in a fatal injury case. We recommended that the worker's actual weekly earnings be the basis of his dependants' pension. After reviewing this matter, the Cabinet declined to recommend to the Workers' Compensation Board that it exercise its discretion and follow our recommendation.

2. A report to the committee of the Cabinet concerning the Board's responsibility to pay interest on a worker's share of a damage award which the Board had in its possession for six and a half months.

The Board maintained that it should not pay interest on the excess because a) it has a policy not to pay interest on compensation awards until one year had elapsed from the date of disablement, and b) the delay in paying the worker was due to the Board's efforts to negotiate a reduction in a claim against the worker's award by the Ministry of Social Services and Housing.

With respect to the first justification, there is an important distinction between workers' compensation (which is a statutory entitlement) and a damage award (which is property). The Board implicitly recognizes this distinction by paying interest on employers' overpayments of assessments. The overpayment is the property of the employer from which the Board benefits. It is thus legally obliged to pay that benefit to the employer. The same reasoning applies to a worker's share of a damage award. In both cases, the Board is in possession of this excess until it decides it should be payable to the worker or employer. The result of the Board's position on this issue would be to reward the Board and penalize the worker for any delay in calculating the excess.

With respect to the second justification, the motive for the delay (which included four months of sick leave for the Board lawyer handling the matter) is irrelevant. The money belonged to the worker and the Board benefitted from it. The Board's actions were intended to help the worker but they were provided gratuitously. The worker cannot be directly charged for this service. We therefore recommended that Cabinet recommend to the Workers' Compensation Board that it pay the worker the interest it earned on his share of the damage award. While the amount to be paid in this particular instance was not large, we felt the principle behind the recommendation was important and should benefit others in the future.

The committee of cabinet proposed in February 1988 that this case be dealt with based on the principles to be enunciated in the case of *Snell v. Workers' Compensation Board* currently on appeal to the B.C. Court of Appeal. The B.C. Supreme Court found in that case that an excess due as a result of a damage award is not the same as a compensation payment under any other provision of the Act and that, in the

absence of a contract or undertaking specifying a date for payment, the Board is obliged to pay interest unless it pays the excess within a reasonable time. This matter is still pending a determination by the WCB. However, unless there is a clear and contrary ruling by the Court of Appeal on the Snell case, the only matter for the Board to consider further with respect to this worker or anyone else in a similar position should be what constitutes a "reasonable time" in the circumstances of a particular case.

3. The issue of disability caused by allergic sensitivity.

It was reported in last year's annual report that this longstanding issue had been rectified in that it was agreed that the Ministry of Labour Committee and the Workers' Compensation Board would further consider the question of compensation for allergic sensitivity. In September 1987, we requested a status report from the Board of its policy review and an anticipated date of completion. We have recently been advised that the Board has not yet made a decision and cannot say when a decision will be made. We will continue to monitor this issue with the Board and the Ministry of Labour and Consumer Services.

4. Public Report #7 - Workers' Compensation Board Systems Study.

As discussed in the introduction to this annual report, the Ombudsman's office completed and issued a Public Report regarding the workers' compensation system in British Columbia. The study was substantially experience-based, drawing on concerns expressed over the years and analyzing this experience against general standards of administrative fairness. The report identified the major recurring sources of dissatisfaction and made specific recommendations for change.

The central theme of the public report was that the fairness of the system depends on the quality of first level decision-making and the timeliness and independence of the appeal system. Although appeals may represent only a small percentage of the total claims handled by the Workers' Compensation Board, the manner in which they are settled determines the integrity of the whole system. Further, it is not the small percentage of cases that are appealed that is relevant. Rather it is the large percentage of successful appeals and the long delay in reaching those successful results which define the problem.

The general conclusion of the report was that the appeal process is overly complex and cumbersome, and that it requires significant refinement in order to achieve acceptance and fairness. A recurring theme was our concern that delay is itself a major element of unfairness. It was a major objective of the report to identify changes in the system that will have the effect of increasing the quality and reputation of workers' compensation decisions. This would significantly reduce the need for Ombudsman review. At the present time, the office devotes a disproportionate amount of its investigative resources to workers' compensation cases. This means that other deserving areas are underserved.

The recommendations represent a legitimate point of view but are not presented as the only accepted options. There are many interested parties to this complex and vitally important topic, with diverse and sometimes competing interests and opinions. All public institutions should be subject to regular and open review: this is particularly important for those which affect fundamental interests of life, health, safety and livelihood. Therefore, the Ombudsman's office has recommended that a Standing Advisory Council representing all major interested parties be established to report to the Minister of Labour and Consumer Services on major policy issues affecting workers' compensation in British Columbia.

As well as attempting to find alternative procedures and strategies to improve the claims and appeals system so as to reduce the need for Ombudsman review, we have also attempted to streamline Ombudsman intake and investigative procedures. These new procedures include ensuring that the complaint is as focussed as possible; some supporting evidence is identified before the office commences an investigation; involving complainants' doctors more at the initial stages to determine whether an investigation is required; and developing criteria to determine the depth of investigation. As well, we will be taking steps to put into place arrangements with the Board to speak with the Commissioners directly regarding decisions they have made. This opportunity to discuss complaints openly with the decision-makers should increase the efficiency with which both offices deal with complaints as the problem will be focussed after discussion rather than emerging after many months of correspondence. This office is hopeful that open discussion will produce the same positive results that have continued to be achieved through the Board's appointment of a liaison person as reported in last year's annual report.

Resolved:	167
Not resolved:	5
Abandoned, withdrawn, nonjur:	41
Not substantiated	84
Declined, discontinued	522
Inquiries	110
Total number of cases closed	929
Number of cases open December 31, 1987	122

Liaison person expedites benefits

The Workers' Compensation Board has appointed a person to serve as a regular liaison with the Om-

budsman's office. The value of this liaison was exemplified in the case of a young man who had suffered a leg amputation after a work injury. The worker contacted our office to complain about delay in a pension award following the termination of wage loss benefits. After we contacted the liaison person, an interim pension decision was made to alleviate the financial hardship imposed by the termination of wage loss benefits. In addition, the worker was paid benefits retroactively under the WCB's continuity of income policy which allows benefits to be maintained pending the outcome of a significant pension decision.(CS87-168)

Delay causes hardships

A worker called our office in distress after the Workers' Compensation Board informed him that it would not make a decision to reopen his claim for wage loss benefits until he could be examined by his specialist. The worker was receiving a permanent partial disability award at the time. The specialist postponed the date of the visit, and the worker was experiencing financial hardship.

We spoke to the manager of the local WCB office, who arranged for the worker to be examined by a Board doctor in the interim. On the basis of that examination, wage loss benefits were reinstituted and the worker was paid from the date when the problem prevented him from continuing in his job.(CS87-169)

Pension backdated

A worker complained to our office about the date from which the Workers' Compensation Board awarded him a pension for silicosis.

The Board had awarded this worker a pension commencing in 1984 on the basis of its doctor's x-ray evidence of the disease. The worker contended that his silicosis disabled him from work in 1980 rather than in 1984. He said he had not been able to work full-time after 1980 and he was unable to work at all after 1981. This had a disastrous effect on his pension because the Board had used his average earnings in this period of low earnings and unemployment to determine his pension.

In reviewing the case, we found that the Board doctor who first examined the worker in 1981 had determined from x-rays that there was no silicosis. However, that same doctor later reported that he had been wrong in his original interpretation of the X-rays. We suggested that the matter be reconsidered. The WCB Commissioners agreed that further investigation of the date of the commencement of the pension should be conducted. The Commissioners subsequently determined that a pension of 20 per cent of the total should be backdated to January 1981, with an increase to 30 per cent from 1983. The pension is now based on earnings prior to 1981. The worker received a retroactive payment of $41,695. (CS87-170)

Not all jobs covered

Many people are not aware that the *Workers Compensation Act* does not cover all industries. The Act specifies which industries must be registered and provides for optional coverage for employers in some other industries.

A young woman telephoned our office to enquire about the reason she had been denied worker's compensation. Employed by a firm which did environmental consulting, she was dissecting fish and injured her finger with the scalpel. She submitted a claim to the WCB and received a form letter from the claims department stating her claim was denied. The letter did not clearly explain that the reason for the denial was that her employer was not required to have coverage. The WCB is planning to revise its form letter.(CS87-171)

Penalty assessment information sought

Two public sector employers contacted the Ombudsman's office with a complaint regarding the Workers' Compensation Board procedure for applying penalty assessments against employers.

The employers complained there was no indication of how the Board calculated the penalty. They were also concerned that the Board did not provide information regarding appeal time limits, especially important when appealing to the Commissioners.

We consulted with Board staff and as a result, the Board agreed to ensure that future notices of penalty assessment include a copy of the Schedule of Sanctions used by the Board, with the employer's payroll bracket highlighted. This will allow the employer to easily see how the Board calculates the penalty assessment.

The Board also agreed to provide clearer notification of appeal rights. The initial notice of penalty assessment already provided information about the first level of appeal and the time limits involved. However, the second notice was not so clear. It provided information about appeals to the Commissioners, the second level of appeal, but omitted the important fact that there was a 21-day time limit within which to appeal. This letter was to be amended to include the time limit information. Both letters were to be amended to clear up any ambiguity about whether or not an appeal acts as a stay against the penalty assessment. It does not and future letters were to state this clearly.(CS87-172)

Flu resulted in benefit loss

A young man had been attending the Rehabilitation Clinic at the Workers' Compensation Board but

did not attend for one week. The adjudicator denied wage loss benefits on the basis that his frequent absences from the program were delaying his recovery from a back injury. The worker submitted a letter from his doctor stating that he had had sinusitis and influenza during the week in question but the adjudicator and the manager refused to reverse the original decision. The worker was also denied an extension of time to appeal the decision. When he complained to the Ombudsman's office, we spoke to the WCB's Ombudsman liaison person. After he reviewed the medical evidence, the wage loss benefits were quickly paid.(CS87-173)

Live-in arrangement no reason for denial

A young woman, 19 years of age, complained that the Board had terminated dependant's benefits she had been receiving following the death of her father in an industrial accident. The *Workers Compensation Act* states that these benefits are payable to a child "under the age of 18" or "under the age of 21 years who is regularly attending an academic, technical or vocational place of education." The young woman was attending school but her benefits were cut off when she began to live with her boyfriend.

We contacted the Workers' Compensation Board and questioned the basis for the termination. After an internal review by the Board, the young woman's benefits were reinstated.(CS87-174)

Residual disability in compensable area

A woman working as a meat counter clerk sustained a neck injury in 1978. The Workers' Compensation Board accepted the claim, paid her wage loss benefits and authorized surgery in 1979. While the WCB had accepted responsibility for only one area of the cervical spine, the surgeon had operated on two areas.

The woman returned to work but in 1986, she found she could no longer work at her job which involved some heavy lifting. She requested a reopening of the claim. The WCB denied a reopening contending that her neck problems were not related to the compensable area but rather to the other area of surgery. That issue is now under appeal.

In our review of her file, we found that the disability awards officer who reviewed her case following her surgery for a possible pension award had decided that a referral for a pension assessment might foster hypochondria. He therefore did not ask a Board doctor to examine her for residual disability in the compensable area. The worker was not notified that she was not to be considered for a pension award.

We asked our liaison officer with the WCB to review the matter. The Board has now awarded a pension retroactive to 1979. (CS87-175)

Help received for training

A man had been getting a small WCB pension after an accident forced him to leave his job. His wife contacted our office after being informed by a rehabilitation consultant that the Rehabilitation Department of the WCB would not assist her husband in pursuing a course for training as a parts person.

We contacted the Rehabilitation Superintendent responsible for the region involved and asked him to review the matter. He spoke to the woman directly to hear her description of her husband's situation following his accident. The WCB subsequently agreed to pay for a subsistence allowance if the worker obtained a placement in the course.

This family had undergone other financial problems unrelated to the worker's disability and were most appreciative of the assistance the WCB has now offered. (CS87-176)

Claim reopened on knee injury

In 1958, a worker sustained an injury at work which was diagnosed as a sprain of the right knee, probably with torn cartilage. This was reported to the WCB but he lost no time from work and received no compensation benefits at the time.

However, the worker experienced ongoing knee pain and by 1983, his knee condition had become disabling. He approached the Board for a re-opening of his claim. The Board concluded that his ongoing knee problems were the result of degenerative changes in the knee that were not related to his work injury. The re-opening was denied.

In reaching its decision, the Board relied on the opinion of one of its orthopedic consultants who had examined the worker and reviewed the 1958 medical reports. The Board noted the consultant's observation that the degeneration in the worker's right knee was far more advanced than in his left knee, but concluded that "it does not appear. . . that he considered this due to the 1958 injury."

We decided to contact the orthopedic consultant to learn whether or not he was able to express an opinion as to why the worker's right knee was much worse than his left. He expressed the view that there was a much greater amount of degeneration in his right knee as a result of the 1958 compensable injury.

In light of what we had learned, we asked the Board to reopen the claim and assess the worker for a permanent partial disability pension. The Board accepted our recommendation. (CS87-177)

Who did the doggy-do?

A woman complained that the Occupational Health and Safety Division of the Workers' Compensation Board unfairly denied her or withheld an industrial first aid instructor's certificate.

She had been accepted into the Board's two-week training course and was told on the last day of instruction that she had satisfactorily completed the course requirements. That evening, the students and the course instructor met for dinner at a restaurant. The complainant attended but she left earlier than the others.

When the rest of the party left the restaurant and returned to their parked cars, one of the instructors found that dog feces had been smeared on the door handle of her car.

The following morning, when the complainant appeared to attend the final day of the course, she was informed that she was being suspended from the course and that her instructor's certificate would be withheld. The reason given was that she was suspected of having placed the offending material on the door handle of the instructor's car. The suspension resulted in an immediate complaint to our office.

An Ombudsman investigator went to the WCB office the same day. Two of the course instructors and several of the students were interviewed. At the conclusion, it appeared that there was a "case" against the complainant based only on circumstance and suspicion arising from what some perceived as animosity between the instructor and the complainant. There appeared to be no reasonable basis upon which the Board could conclude that the complainant had committed the misdeed and, even if it could be proved, it was doubtful that a denial or suspension of her certificate was an appropriate response.

When we expressed this concern to Board staff, they agreed that it was inappropriate to penalize the complainant. The suspension was lifted and the certificate was issued. (CS87-178)

Benefits won but too late

A machinist developed respiratory problems which he attributed to pollutants in his workplace. He stopped work in 1981 and submitted a claim to the Workers' Compensation Board. His claim was denied and he lost his appeals to the Review Board and to the Commissioners. The man then appealed to a Medical Review Panel.(MRP) The certificate of the MRP was ambiguous with respect to the impact of the dust in his work environment to his disability. The Commissioners interpreted the certificate of the MRP as confirming the medical decision of the Board. We investigated the complaint and proposed that the Board refer the ambiguous certificate back to the panel for clarification. The Commissioners agreed to do this. The panel made it clear that his problem was partially attributable to the work environment. This partial win proved to be a hollow victory, however, since the worker died a year before the issue was finally settled. His estate received the benefits to which the worker would have been entitled.(CS87-179)

'Average wage' was too low

A man contacted our office with the complaint that he had not been paid an adequate pension by the Worker's Compensation Board. He had been assessed as having a five per cent permanent partial disability. However, the Board calculates pensions on the injured worker's "average wage" prior to the date of injury, usually over the preceding three years. Since this man had only worked sporadically, and the Board does not include unemployment insurance benefits in its calculation of average wage, his pension was particularly low. He had been awarded a commuted pension in the amount of $3,536.72.

There was little that could be done to remedy the fact that this man's work history involved several periods of unemployment. However, during the course of our investigation we found that information concerning the man's earnings during 1981, the year he was injured, had come to light in 1984. Apparently, his income during 1981 had not been taken into account to calculate his average earnings from January, 1979 to November 10, 1981, the date of his injury. When this fact came to light in 1984, however, the Board had not recalculated the man's benefits.

As a result of our enquiries, the Board agreed to recalculate the man's average wage for the period 1979 to 1981, including the new earnings information. As a result of this recalculation, the man received $1,041.55 as an adjustment to his pension, including accrued interest.

Besides the pension issue, wage loss benefits were also based on a worker's "average wage" after 13 weeks of benefits. The Board's recalculation resulted in a further payment of $ 1,421.03 for wage loss owing to the man. The Board also paid accrued interest from the date the new earnings information was received.(CS87-180)

Timing of appeal in dispute

A worker was injured in 1981 and experienced continuing neck problems after the initial incident. The Worker's Compensation Board decided not to reopen his claim four months after the injury. In 1983, new radiological evidence came to light and the worker submitted this to the WCB for reconsideration. The Board again declined to reopen the claim.

The worker then appealed to the Review Board concerning the 1981 and the 1983 decisions. Although he appealed within the 90-day time limit for the 1983 decision, his appeal was considered to be merely an application for extension of time on the 1981 decision and he was denied an appeal. The worker then came to the Ombudsman's office for assistance.

We asked the Review Board to reconsider giving the worker a hearing on the 1983 decision. The Review Board determined that the worker did com-

menc e a valid appeal in 1983 and a hearing was to be expedited.(CS87-181)

Eligibility for coverage denied

A man who wished to do janitorial work and carpet cleaning was promised future work with an employer if he could obtain his own coverage for Worker's Compensation benefits. When he contacted the Worker's Compensation Board, he was informed that he would not be eligible for personal optional protection because he did not meet the criteria for an independent contractor. These criteria concern the equipment and material supplied by the individual and the number of clients served. The WCB's position was that the employer should pay for the man's coverage under its assessments.

This case highlights a difficult problem for the WCB's Assessment Department. Some employers attempt to avoid assessment payments by having workers classify themselves as independent contractors. In this particular case, however, the WCB later accepted that the cleaner did meet the requirements to be classified as an independent contractor, and the man was therefore able to obtain the coverage required by the employer. (CS87-182)

Long case finally closed

Last year, we reported that we had had ongoing communications with the Ministry of Labour regarding the unresolved cases which the former Ombudsman had reported to Cabinet and the Legislature. In one worker's case, the Ministry of Labour and the Board agreed to refer the matters in dispute to a Medical Review Panel. (For background details of the case, see page 97 of the 1986 Annual Report, the first case under 'Special Reports'.) Early in 1988, we learned that the Medical Review Panel had found in the worker's favour. As a result, that worker will be receiving wage loss benefits for approximately three and a half months and a pension dating back to 1967.

The resolution of this case demonstrates two concerns our office has in dealing with the Commissioners: 1) inadequate explanation of why they have chosen to prefer a Board doctor's opinion, made without benefit of examining the worker, over the opinions of the worker's doctors who have treated and examined him and: 2) the lengthy, unnecessary delays that result.

1) The Board stated that the general opinion of the Board's orthopedic consultant was a reasonable one which was supported by the available evidence. The fact that he was the only doctor who had given such an opinion (he had not examined the worker) and that two other specialists and a general practitioner had given opposite opinions was not addressed. There was no explanation of why the Board's consultant's opinion constituted the best evidence. Had the issue been addressed, there likely would not have been a need to have a Medical Review Panel determine the matter. It took two and half more years for the Medical Review Panel to give a legally binding certificate, coming to the same conclusion as we had communicated to the Commissioners previously.

2) Although the Ombudsman first wrote to the Board in December 1983 regarding this matter and, because it remained unresolved, made a report to the Legislature in June 1985, it was not until January 1988 that the worker finally had a successful resolution to his complaint. This lengthy delay in resolving the complaint cannot be justified in view of the preponderance of medical evidence in favour of the worker at the time that the Ombudsman's recommendation was made.

After submitting a report to Cabinet, the Ombudsman met with the Chairman of the Workers' Compensation Board to discuss personally our findings and recommendation. At that point, the chairman suggested that the Board refer the worker's case to a Medical Review Panel or obtain another opinion from an outside specialist. It was never explained why it was necessary to obtain yet another medical opinion or to refer the case to a Medical Review Panel rather than accept our recommendation. Despite this, the case was referred to the MRP.

Happily for the worker, despite the length of time it took to resolve his complaint, the Medical Review Panel, reviewing the medical evidence as an expert body, came to the same conclusion as the Ombudsman's office and issued a certificate binding on the Board. (CS87-183)

Origin of problems disputed

In 1963, a worker suffered serious injuries in a logging accident. He was later compensated for those injuries. No back injury was reported or diagnosed at that time.

The board did not hear again from the worker until he suffered a back injury at work in 1980. It was considered that the 1980 back injury aggravated a back condition which had been asymptomatic prior to 1980. The worker was awarded a permanent partial disability pension for his 1980 injury. The worker claimed that the underlying back condition had been caused by his 1963 injury and that his pension should be made retroactive to 1963. The WCB rejected that claim. The worker appealed to the Board of Review and to the Commissioners. In each case, it was held that the worker suffered no back injury in 1963 and that if he did, it was not disabling. The worker then complained to the Ombudsman's office.

Our review of the medical evidence revealed that the previously asymptomatic condition of the worker's back was diagnosed as an ossifying hematoma.

Several doctors expressed opinions as to how that hematoma came into existence and all were agreed that the 1963 injury was the only possibility. However, the weight of medical opinion and the worker's lack of complaint about his back between 1963 to 1980 supported the Board's view that the condition was not disabling prior to 1980. There being no evidence of a disability warranting a pension prior to 1980, we found the complaint to be not substantiated. (CS87-184)

Start of symptoms the key

A man wrote us a confusing letter citing a 1965 WCB claim number but referring to a 1954 injury which he believed had caused back and lung problems. We were unable to converse with him directly because of his disabilities or find a person who was knowledgeable about his complaint and work history. To clarify the issues involved in his complaint, we reviewed the 1965 claims file which involved a head injury. The worker had appealed a termination of benefits on that claim to the Commissioners of the Workers' Compensation Board because he believed his loss of hearing and symptoms of vertigo were related to the 1965 injury. The Commissioners denied his appeal on the basis that his ongoing problems were related to his Meniere's disease, an inner ear problem which causes symptoms of vertigo.

We contacted several physicians who had treated him in the past. We learned that the man had had a back injury in Alberta in 1951, for which surgery was performed in 1955. The Workers' Compensation Board in Alberta had accepted limited responsibility for that surgery. The worker experienced no other injury in B.C. in the 1950s. At the time of the treatment in Alberta, the worker had exhibited unusual behaviour and complained about symptoms of dizziness similar to those he described following his 1965 injury. On the basis of the existence of those symptoms prior to the injury in B.C. and evidence from doctors denying that the Meniere's disease was related to the 1965 injury, we found no basis to question the decision of the Commissioners.

We advised his doctor that, if further medical evidence became available with respect to symptoms related to the head or back injuries, he could request reconsideration from the appropriate Workers' Compensation Board. (CS87-185)

Man didn't feel fit to work

A dockworker was injured when a wooden pallet weighing more than 90 kilograms fell two metres, hitting him in the right rear rib cage. The Workers' Compensation Board paid wage loss for four months at which point he was declared fit to return to work. The worker disagreed as he was still experiencing back pain. He appealed to the Board of Review which denied his appeal. His further appeal to the Commissioners was also turned down. Finally, he appealed to an independent Medical Review Panel which concluded that while he did have a disabled back, it was the result not of his work injury but of degenerative changes in the lumbar spine which existed before the injury. The worker disagreed with the panel and complained to the Ombudsman's office.

We contacted his doctor and requested his assistance in reviewing both the certificate and narrative of the Medical Review Panel. Neither the worker's doctor, the worker nor ourselves could identify any errors made by the panel in either procedures or their reasoning. As a result, we were unable to substantiate the worker's complaint. (CS87-186)

Criminal Injuries Compensation Board

Resolved:	3
Not resolved:	-
Abandoned, withdrawn, nonjur:	1
Not substantiated	4
Declined, discontinued	17
Inquiries	2
Total number of cases closed	27
Number of cases open December 31, 1987	-

Shooting victim receives benefits

Before he was about to give evidence in a criminal trial, a young man was shot four times and left for dead. He lived and was put under police protection.

The man was experiencing financial hardship and he filed a claim with the Criminal Injuries Compensation Board immediately. Unfortunately, the amount of time required to conduct an investigation is lengthy. When it became obvious there would be a long wait, the young man appealed to the Ombudsman's office for help. We were able to work with the Criminal Injuries Compensation Board and police and, within two days, the complainant was awarded interim benefits.(CS87-187)

Non-Jurisdictional Complaints

Federal Government

A fair number of non-jurisdictional calls concern federal government agencies or programs. Since there is no federal Ombudsman, our office refers complainants to various resources and especially to the caller's member of parliament. Calls typically involve the Unemployment Insurance Commission, Canada Pension Plan, Revenue Canada, Taxation and Canada Post.

In one case, a caller needed to gain access to the federal government building in a small town to process her UIC claim. However, all outside doors had been locked by striking postal workers. An Ombudsman officer suggested the woman call her local MP directly. The MP's constituency office was unaware of the situation but agreed to intervene immediately to prevent lack of access to federal services because of a problem with one particular agency housed in the same building. (CS87-188)

In another case, a woman was concerned because she believed that there was no money left in the Residential Rehabilitation Assistance Program to allow her to replace her furnace. Our office called the region involved and found that the woman had misunderstood. The problem was not that there were no funds left, but that her application had not been dealt with yet. The program administrator agreed to get back to her soon. (CS87-189)

Private Legal Matters

The Ombudsman's office continues to receive many complaints regarding private legal matters, court decisions, and lawyers' and judges' actions. The Ombudsman cannot investigate court issues other than administrative matters such as improper service of documents or delay by a court official. Callers are referred to government agencies which may be able to help but often a person's only recourse is through the courts, either by appealing a court verdict or by initiating legal action. For legal advice, callers are often referred to the Lawyer Referral Service or the Legal Services Society if their financial situation appears to warrant it. Where the matter is purely monetary, complainants may be referred to Small Claims Court where they can act on their own behalf to recover amounts of up to $3,000.

Many calls or letters are received concerning divorce and custody issues. These are usually charged with emotion, since the issue involves family relationships and the future of the children. We may put such complainants in touch with Family Court counsellors or suggest the appointment of a child advocate. With respect to maintenance arrears, a common complaint with increasing numbers of family breakdowns, we can refer the caller to the Ministry of Attorney General regarding maintenance enforcement. Legislation is due to be considered by the Legislature in the spring of 1988 that would enable custodial parents to register and receive active assistance in obtaining support from ex-spouses.

In cases where a complainant disagrees with a judge's decision, he or she is referred to the appeal process. In one case, a woman questioned a judge's refusal to allow the prosecutor to call upon key witnesses. In the end, the defendant was given a short, suspended sentence and not ordered to pay restitution, a decision with which this woman took strong exception. We explained to her that the judge's decision was not within the jurisdiction of the Ombudsman to investigate and suggested she register a complaint with the chief judge concerning the judge's handling of the trial.(CS87-190)

Other Provincial Governments

While the B.C. Ombudsman cannot investigate complaints about other provincial governments, we do refer callers to other province's Ombudsman offices, where appropriate, or we may contact those offices or another province's agencies to assist B.C. residents.

For example, a mother living in B.C.'s Interior called in on our toll-free line to say that her 30-year-old son was having trouble getting a replacement birth certificate issued by the Nova Scotia government after his ID was stolen. Apparently, a certificate had been issued to her after his birth and again at least once or twice after that. However, the authorities in Nova Scotia were now saying that he had been registered as a female at birth. Withholding of the birth certificate meant other important documentation, such as a social insurance number, could not be obtained which, in turn, held up job applications for the son. We called the Nova Scotia Ombudsman's office to ask for its assistance and investigators there agreed to contact the applicant and look into the complaint.(CS87-191)

Consumer Matters

Many callers believe, mistakenly, that the Ombudsman can investigate complaints about consumer transactions. Others know they are not within his jurisdiction but ask for information on where they should call or write. Unfortunately, most such organizations are located only in the Lower Mainland or Victoria, so complainants must write them. Where a government office can be of help, we may put a

complainant in touch with the nearest government agent who can then contact other government offices, or we may call a government department directly to ask that a complainant be contacted.

Consumer complaints often involve car purchases. Where the car is new, we urge the complainant to go back to the dealership, follow through up to the manager or dealership owner and pursue the complaint to the regional or head office, if necessary. If the car was used, the purchaser is advised to try and negotiate an acceptable resolution with the car lot. If repairs or the car value is under $3,000, a claim may be pursued through Small Claims Court. In some cases, a person is referred to the Lawyer Referral Service which allows him or her to have a half-hour interview with a lawyer for the nominal sum of $10. In one case, a car dealer allegedly agreed to reduce a purchase price by $2,000 but did not put this on the contract. When the buyer complained to the Ombudsman's office, we referred him to the dealership's vice-president of customer relations, to the Consumer Association of Canada and to Small Claims Court regarding the $2,000 difference only, since the new car cost well over the $3,000 maximum claim allowed under court rules.(CS87-192)

Other complaints involve smaller consumer purchases. One woman bought an expensive leather briefcase for business use. She expected the $200 investment would provide her with a serviceable case which would last for some years, However, the first day on the job, the zipper came apart. She wanted a new briefcase, but the store owner offered to repair the one she had bought, saying he thought she had been rough on it and he had none exactly the same. Since both parties were sure they were right, the complainant was referred to the Better Business Bureau, the Consumers Association of Canada and, if necessary, to Small Claims Court.(CS87-193)

In another case, the caller had purchased a vacuum cleaner, rug shampooer and accessories but found she could not keep up the monthly payments. The company turned her account over to a collection agency which demanded $100 more than the woman believed she owed. When she offered to return one of the machines, the agency said it would only write off the whole debt if it received both machines back. The complainant was referred to the Better Business Bureau, the Consumers Association and, in this case, to either the Lawyer Referral Service or the Legal Services Society, given her limited income. In cases such as this, where people also appear to have an overall financial problem with which they cannot cope, we also refer them to the Consumer Credit and Debtor Assistance Branch of the Ministry of Labour and Consumer Services. (CS87-194)

False bail information created border problem

A man obtained bail on his own recognizance and went to work. On a lunch break with his employer, he was stopped at the International border and taken into custody by the RCMP who held him for approximately seven and a half hours. Several times he showed the arresting officer and the desk sergeant his bail papers. The RCMP relied on information from the Vancouver Police Department that a warrant for arrest was outstanding. Information that the warrant was made ineffective three days earlier at the bail hearing had not been communicated to the Vancouver Police Department.

Before he contacted the Ombudsman's office, the complainant had written to the RCMP and the Vancouver Police Department with some help from the B.C. Civil Liberties Association. He also wrote to the Attorney General's Office. We were able to assist him to negotiate a settlement of $1,050 for the loss of his liberty, the humiliation of the arrest and the loss of the day's wage.(CS87-195)

Up-front on criminal record check

The Ombudsman can make a public report on any matter that he considers to be in the public interest. In April 1987, a public report was released that reviewed the government use of criminal record checks as a method of screening people for employment. Copies of this report have been requested by people working in the public and private sectors, unions, volunteer societies and civil liberties groups.

One of the many interesting requests came from a Fire Chief of a small community who was concerned that his Board of Trustees wanted to conduct criminal record checks on job applicants without their knowledge. Although our office has no jurisdiction over a Fire District's Board of Trustees, we were pleased to discuss the Fire Chief's concerns. We gave him the required information including reasons why all applicants should be informed if criminal record checks are a condition of employment.(CS87-196)

Part III
Statistics

TABLE 1

Profile of Complainants and Complaints
Closed Between January 1, 1986 and December 31, 1987

	Number	Percent
Mode of First Contact		
Aggrieved Party	11,792	95.
Relative/Friend	497	4.
MLA and MP	75	.06
Other	42	.04
TOTAL	12,406	100.00

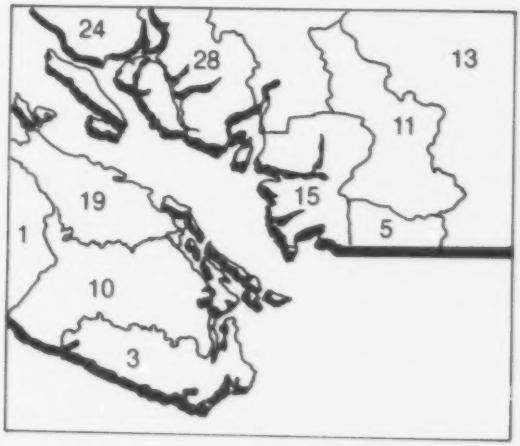


TABLE 2

Percentage of Complaints Closed by Regional District as of December 31, 1987

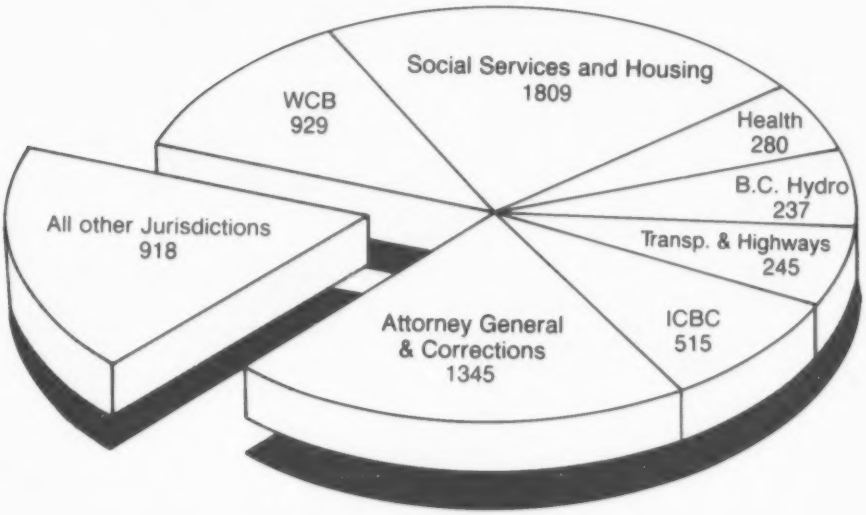
Regional District	Percentage of population 1981	Percentage of complaints 1987
1. Alberni-Clayoquot	1.2	1.1
2. Bulkley-Nechako	1.4	1.6
3. Capital Region	9.1	14.1
4. Cariboo	2.2	2.5
5. Central Fraser Valley	4.2	3.3
6. Central Kootenay	1.9	2.6
7. Central Okanagan	3.1	3.2
8. Columbia-Shuswap	1.5	2.1
9. Comox-Strathcona	2.5	2.4
10. Cowichan Valley	1.9	1.9
11. Dewdney-Alouette	2.2	2.7
12. East Kootenay	2.0	2.0
13. Fraser-Cheam	2.0	2.9
14. Fraser-Ft. George	4.3	5.8
15. Greater Vancouver	42.6	27.6
16. Kitimat-Stikine	1.5	1.8
17. Kootenay Boundary	1.2	1.2
18. Mount Waddington	0.5	0.4
19. Nanaimo	2.8	4.5
20. North Okanagan	2.0	2.7
21. Central Coast	0.1	0.1
22. Okanagan-Similkameen	2.1	2.3
23. Peace-Liard	2.0	3.1
24. Powell River	0.7	0.6
25. Skeena-Queen Charlotte	0.9	0.9
26. Squamish-Lillooet	0.7	0.7
27. Stikine Region (Unincorporated)	0.1	0.2
28. Sunshine Coast	0.6	0.5
29. Thompson-Nicola	3.7	4.2
Out of Province		0.8
TOTAL	100.0	100.0

TABLE 3

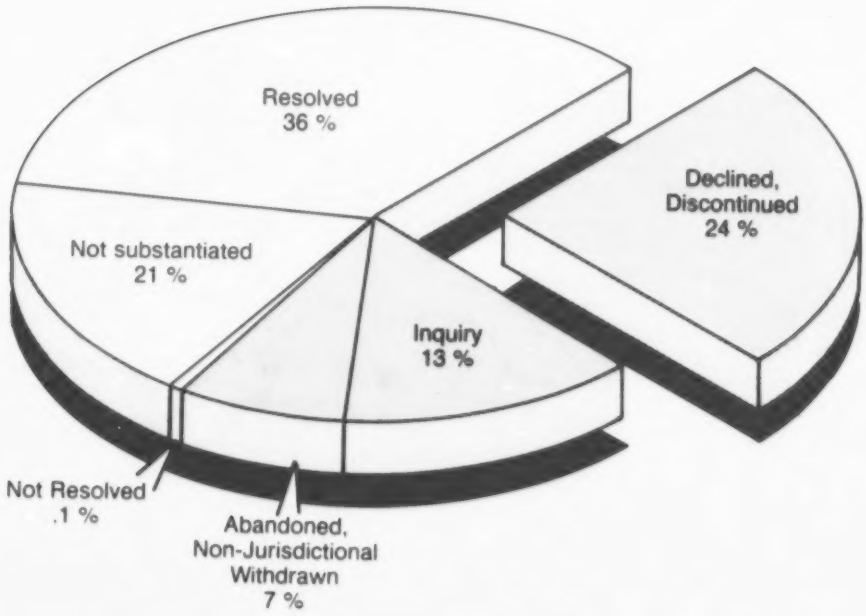
Disposition of Complaints (Proclaimed Authorities)
Closed between January 1987 and December 1987

	Resolved	Not Resolved	Abandoned, Non-Juris-dictional, Withdrawn	Not Substan-tiated	Declined Discont.	Inquiry	Total
A. MINISTRIES:							
Agriculture and Fisheries	1		2	6		2	11
Attorney General	500		95	384	282	84	1345
Advanced Ed./Job Trng.	17		2	7	7	8	41
Economic Development						1	1
Education	4		1	7	4	6	22
Energy, Mines	1		2	3	2		8
Environment & Parks	13		10	26	16	5	70
Finance & Corp. Rel.	13		9	25	11	14	72
Forests & Lands	30		7	28	12	3	80
Health	117		29	64	32	38	280
Intergovernrmental Rel.	1				1		2
Labour & Consumer Serv.	19		6	22	43	12	102
Municipal Affairs	6		7	15	24	9	61
Provincial Secretary	6		2	4	2	1	15
Social Serv. & Housing	855		102	364	141	347	1809
Tr. & Highways	93	1	23	75	37	16	245
Tourism, Rec. & Culture	1						1
SUB-TOTAL A	1677	1	297	1030	614	546	4165
Percent	40		7	24	16	13	100
B: BOARDS, COMMISSIONS:							
Agricultural Land Comm	1			1	3	4	9
B.C. Assessment	8	1	6	6	7	1	29
B.C. Board of Parole	6			12	10	2	30
B.C.B.C.	1				1	1	3
B.C. Coun. Hum. Rights	1			4	1		6
B.C.D.C.							
B.C. Ferry Corporation	4	1	1	30			36
B.C.H.M.C.	18		2	8		3	31
B.C. Hydro	128		6	45	47	11	237
B.C. Systems							
B.C. Railway				1	1	1	3
B.C. Steamships							
B.C. Transit	1			6	2		9
Colleges	1		1	8	2	2	14
Criminal Injuries	3		1	4	17	2	27
Environment App. Bd.					4	1	5
EXPO				1			1
Hospital Boards				1			1
I.C.B.C.	170		85	43	164	53	515
Industrial Rel. Board	2			7	7		16
Motor Carrier Comm.	3		1	1	4		9
Municipal Police Brds.	4		5	3	15	2	29
W.C.B.	167	5	41	84	522	110	929
Boards of Review	5		2	6	59	14	86
Others	31		6	31	20	1	89
SUB-TOTAL B	554	7	157	302	886	208	2114
Percent	27	1	7	15	41	9	100
TOTALS A + B	2231	8	454	1332	1500	754	6279
Percent	36		7	21	24	12	100

Disposition of Complaints, Proclaimed Authorities, 1987



Total: 6279 Complaints



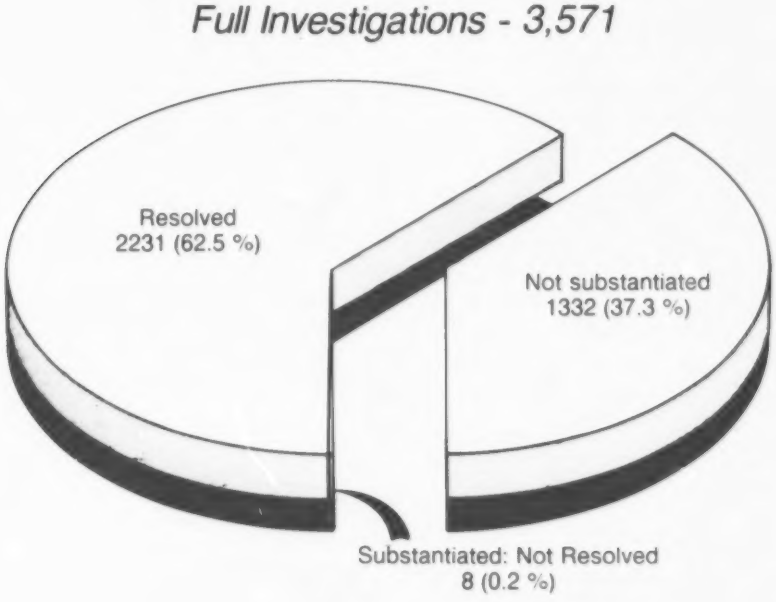


TABLE 4

Complaints Against Unproclaimed Authorities
(Sections 3-11, Schedule of Ombudsman Act)
Closed between January 1, 1987 and December 31, 1987

	Total
Government Corporations	4
Municipalities	153
Regional Districts	31
Public Schools	45
Universities	4
Colleges and Prov. Institutes	1
Hospital Boards	23
Professional/Occupational Assoc.	10
Islands Trust	1
TOTAL	274

TABLE 5

Non-Jurisdictional Complaints
Closed between January 1, 1987 and December 31, 1987

	Total
Federal, other provincial territorial and foreign governments	780
Marketplace matters - requests for personal assistance	3263
Professional actions	162
Legal and court matters	1297
Police matters	153
Statutory boards	22
Miscellaneous	176
TOTAL	5853

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. Inquiries		754	28.0
2. Abandoned by Complainant		191	7.0
3. Withdrawn by Complainant		254	9.0
4. Not an Authority		4	.1
5. Not a matter of Administration		23	.7
6. Does not aggrieve a person			
7. Appeal to Tribunal		347	13.0
8. Solicitor for an Authority		3	.1
Discontinued by Ombudsman		1132	42.0
(9) Over one year old	4		
(10) Insufficient personal interest	7		
(11) Available remedy	779		
(12) Frivolous/Vexatious	4		
(13) Can Consider w/o Investigations	79		
(14) Not beneficial to complainant	201		
(15) Cost exceeds benefit	2		
(16) Evidence not available	56		
17. Not Resolved		8	.1
TOTAL		2716	100.0

TABLE 7

Level of Impact

Resolved (Jurisdictional) Complaints
Closed between January and December 1987

	Individual Only	Practice	Procedure	Regulation	Statute	Total
Resolved Complaints	2063	135	33			2231

TABLE 8
List of Reports

Year	Cabinet Reports (Section 24)	Special Reports (to the Legislature) Section 2)	Public Reports (Section 30(2))
1981	4	3	1
1982	1	2	1
1983	3	3	0
1984	5	7	1
1985	13	7	1
1986	2	0	0
1987	2	0	5
TOTALS	30	22	9

TABLE 9
Number of Complaints/Inquiries Closed
For Selected Ministries, Boards, Commissions, etc.

	1982	1983	1984	1985	1986	1987
Social Service & Housing	599	984	1,369	1,820	1,603	1,809
ICBC	791	810	499	424	405	515
Workers' Compensation	440	482	641	737	773	929
Attorney General	419	428	988	831	997	1,345
Transportation/Highways	220	263	285	249	163	245
Health	163	209	301	569	451	280
B.C. Hydro and Power	135	159	212	365	321	237

TABLE 10

Closed Complaints by Jurisdiction and Year

Year	Total Complaints Closed	Number Outside Jurisdiction	Number Within Jurisdiction	Percent Within Jurisdiction
1979-80	4,197	2,309	1,888	44.9
1981	4,765	2,008	2,757	57.8
1982	7,979	3,851	4,128	51.7
1983	9,762	5,156	4,606	47.2
1984	11,343	5,636	5,707	50.3
1985	12,018	6,184	5,834	48.5
1986	11,185	5,746	5,439	48.6
1987	12,406	6,127	6,279	50.6

TABLE 11

Disposition of Jurisdictional Complaints
1979-87: Numbers of Complaints Closed

	79-80	1981	1982	1983	1984	1985	1986	1987
Not resolved	0	74	18	20	51	29	25	8
Resolved/Rectified	565	781	1,304	1,556	2,053	2,267	1,833	2,231
Not substantiated	459	682	880	1,123	1,264	1,245	1,178	1,332
Discontinued	864	1,220	1,926	1,907	2,339	2,293	1,936	1,954
Inquiries							467	754
TOTAL	1,888	2,757	4,128	4,606	5,707	5,834	5,439	6,279

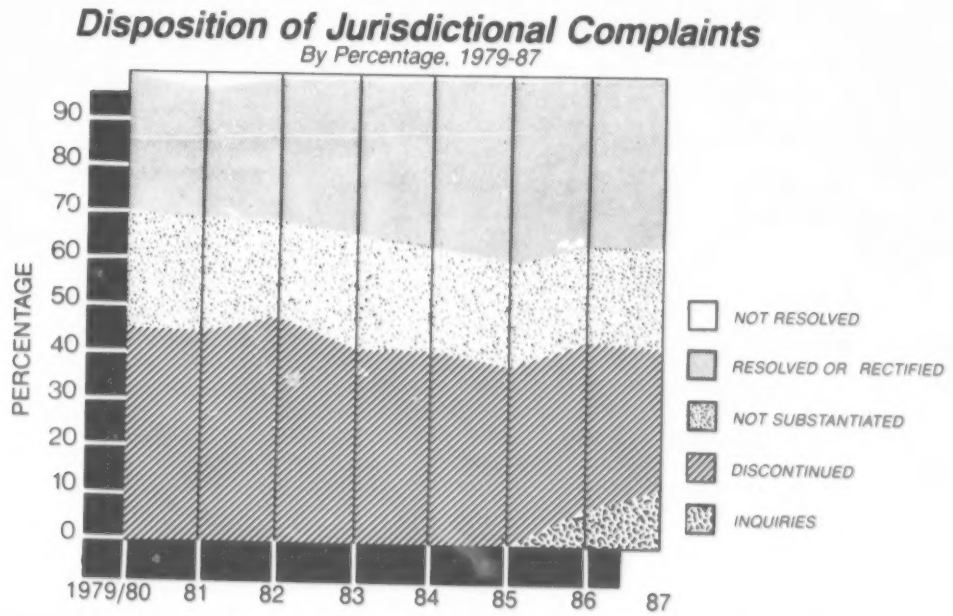


TABLE 12

Disposition of Jurisdictional Complaints
1979-87: Percentages

	79/80	1981	1982	1983	1984	1985	1986	1987
Not Resolved	0	3	1	1	1	1	.4	.1
Resolved/rectified	30	29	31	34	36	39	33.6	35.6
Not substantiated	24	25	21	24	22	21	22.0	21.2
Discontinued	46	44	47	41	41	39	36.0	31.1
Inquiries							8.0	12.0

TABLE 13

Complaints/Inquiries Received and Closed

Year	New Complaints Received	Percent Increase/Decrease Over Previous Year	Complaints Closed	Percent Increase/Decrease Over Previous Year
1979	924		256	
1980	3,840		3,941	
1981	4,935	28.5	4,765	20.9
1982	8,179	65.7	7,979	67.5
1983	9,534	16.6	9,762	22.3
1984	11,462	20.2	11,343	16.2
1985	11,308	-1.3	12,018	5.9
1986	11,012	-2.6	11,185	-6.9
1987	12,712	15.4	12,406	10.9
79-87	73,906		73,655	

New Complaints Received, 1979-1987

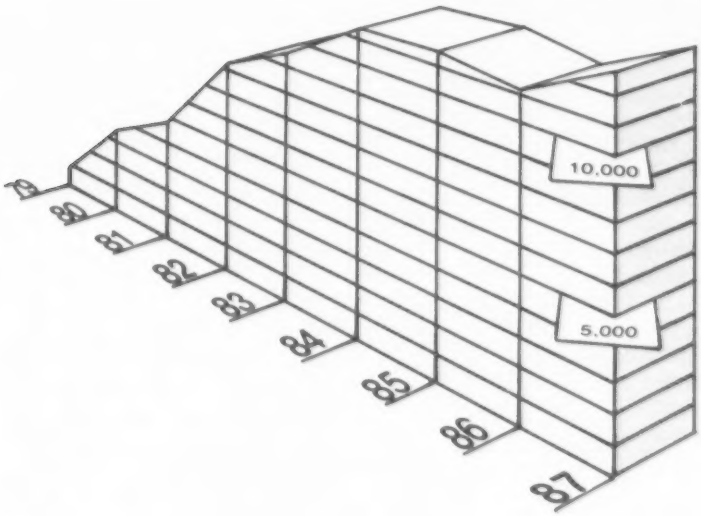


TABLE 14

1987 Complaint/Inquiry Load

1979-1986 complaints carried into 1987	949
New complaints received in 1987	12,712
Total active complaints in 1987	13,661
Complaints closed in 1987	12,406
Complaints still under investigation at year ending December 31, 1987	1,255

Staff as at December 31, 1987

Amren, R.W. Bergen
Anderson, Patricia (Pat)
Berry, Susan P.
Beyer, L. Eleonore
Bohlin, Ronald H.
Britneff, Elizabeth (Libby)
Brown, Cleta
Cameron, David A.
Davis, David
Dennison, Sid
Diersch, Eileen (LOA)
Dixon, Lorrainne A.
Gardiner, Thomas (Scotty) M.
Hadley, Sonja E.
Hallam, Karen M.
Hamilton, Angela B.
Hayward, Dorothy
Henders, Keith C.
Heyman, Susan L.
Humphreys, Barbara G.
Illington, Joy
Kembel, Joanne L.
Kemeny, Carol
Labrick, Elisabeth
Madison, Christine
Nugent, Mary Elizabeth
Owen, Stephen
Parfitt, D. Brent
Phillips, R. Delmar (Del)
Ross, Michael
Schautele, Irita
Scott, Elizabeth
Skinner, Michael T.
Smalley, Leora D.
Spangelo, Cindy
Summersgill, William (Bill) M.
Switzer, Janice
Tadsen, Glen
Tweddle, Rita
Williams, Holly E.

Part IV
The Ombudsman Act

"Amalgamated version, convenience copy only."

OMBUDSMAN ACT

[Ss. 3 to 11 of Schedule not in force; see *s. 35]*

CHAPTER 306

Interpretation

1. In this Act "authority" means an authority set out in the Schedule and includes members and employees of the authority.

1977-58-1.

Appointment of Ombudsman

2. (1) The Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to him under this Act.

(2) The Legislative Assembly shall not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

1977-58-2(1,2).

Term of office

3. (1) The Ombudsman shall be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman shall not hold another office or engage in other employment.

1977-58-2(3,4).

Remuneration

4. (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia.

(1.1) The Ombudsman holding office when this subsection comes into force shall, during the remainder of his current term of office, be paid the greater of

(a) the salary he is actually receiving on December 1, 1987, or

(b) the salary prescribed in subsection (1).

(2) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred by him in discharging his duties.

1977-58-2(5,6), 1987-68-21

Pension

5. (1) Subject to this section, the *Pension (Public Service) Act* applies to the Ombudsman.

(2) An Ombudsman who retires, is retired or removed from office after at least 10 years' service shall be granted an annual pension payable on or after attaining age 60.

(3) Where an Ombudsman who has served at least 5 years is removed from office due to physical or mental disability, section 19 of the *Pension (Public Service) Act* applies and he is entitled to a superannuation allowance commencing the first day of the month following his removal.

(4) Where an Ombudsman who has served at least 5 years dies in office, section 20 of the *Pension (Public Service) Act* applies and the surviving spouse is entitled to a superannuation allowance commencing the first day of the month following the death.

(5) Where calculating the amount of a superannuation allowance under this section

(a) each year of service as Ombudsman shall be counted as 1 1/2 years of pensionable service; and

(b) the number of years referred to in section 19 (1) (b) of the *Pension (Public Service) Act* shall be multiplied by 1.5.

(6) Subsection (5) does not apply to the calculation under section 6 (5) of the *Pension (Public Service) Act*.

1977-58-2(7 to 11); 1985-14-4.

Resignation, removal or suspension

6. (1) The Ombudsman may at any time resign his office by written notice to the Speaker of the Legislative Assembly or to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from the Province.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor shall, in accordance with the recommendation,

(a) suspend the Ombudsman, with or without salary; or

(b) remove the Ombudsman from his office.

(3) Where

(a) the Ombudsman is suspended or removed;

(b) the office of Ombudsman becomes vacant for a reason other than by operation of paragraph (f); or

(c) the Ombudsman is temporarily ill or temporarily absent for another reason

the Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint an acting Ombudsman to hold office until

(d) the appointment of a new Ombudsman under section 2;

(e) the end of the period of suspension of the Ombudsman;

(f) the expiry of 30 sitting days after the commencement of the next session of the Legislature; or

(g) the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

(4) When the Legislature is not sitting and is not ordered to sit within the next 5 days the Lieutenant Governor in Council may suspend the Ombudsman from his office, with or without salary, for cause or incapacity, but the suspension shall not continue in force after the expiry of 30 sitting days.

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where

(a) the Ombudsman is suspended or removed; or

(b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but no recommendation under section 2 or 6 (3) is made by the Legislative Assembly before the end of that sitting or before an adjournment of the Legislature exceeding 5 days, or

(c) the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days; or

(d) the Ombudsman is temporarily ill or temporarily absent for another reason,

the Lieutenant Governor in Council may appoint an acting Ombudsman.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2;

(b) at the end of the period of suspension of the Ombudsman;

(c) immediately after the expiry of 30 sitting days after the day on which he was appointed;

(d) on the appointment of an acting Ombudsman under section 6 (3); or

(e) on the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

1977-58-4.

Staff

8. (1) The Ombudsman may, in accordance with the *Public Sevice Act*, appoint employees necessary to enable him to perform his duties.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman shall be deemed to be a deputy minister.

(3) [Repealed 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).]

(4) The Ombudsman may make a special report to the Legislative Assembly where he believes the

(a) amounts and establishment provided for the office of the Ombudsman in the Estimates; or

(b) services provided to him by the Government Personnel Services Division

are inadequate to enable him to fulfil his duties.

1977-58-5; 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).

Confidentiality

9. (1) Before beginning to perform his duties, the Ombudsman shall take an oath before the Clerk of the Legislative Assembly that he will faithfully and impartially exercise the powers and perform the duties of his office, and that he will not, except where permitted by this Act, divulge any information received by him under this Act.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this Act, divulge any information received by him under this Act, and for the purposes of this subsection the Ombudsman is a commissioner for taking affidavits for British Columbia.

(3) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

(4) Neither the Ombudsman nor a person holding an office or appointment under the Ombudsman shall give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his duties under this Act, except to enforce his powers of investigation, compliance with this Act or with respect to a trial of a person for perjury.

(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose a matter that, in his opinion, is necessary to

(a) further an investigation;

(b) prosecute an offence under this Act; or

(c) establish grounds for his conclusions and recommendations made in a report under this Act.

1977-58-6.

Powers and duties of Ombudsman in matters of administration

10. (1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate

(a) a decision or recommendation made;

(b) an act done or omitted; or

(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

(a) a decision, recommendation or act is final;

(b) no appeal lies in respect of it; or

(c) no proceeding or decision of the authority whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall

(a) subject to any special directions, investigate the matter referred so far as it is within his jurisdiction; and

(b) report back as he thinks fit, but sections 22 to 25 do not apply in respect of an investigation or report made under this subsection.

1977-58-7.

Jurisdiction of Ombudsman

11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or

(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring prior to the commencement of this Act.

(3) Where a question arises as to the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, he may apply to the Supreme Court for a declaratory order determining the question.

1977-58-8.

Complaint to Ombudsman

12. (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint shall be in writing.

(3) Notwithstanding any enactment, where a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman, it shall be mailed or forwarded immediately, unopened, to the Ombudsman by the person in charge of the institution, hospital or facility in which the writer is confined or by the person having custody of the person; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

1977-58-9.

Refusal to investigate

13. The Ombudsman may refuse to investigate or cease investigating a complaint where in his opinion

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which his complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and if the person aggrieved has not availed himself of the remedy, there is no reasonable justification for his failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint; or

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved.

1977-58-10.

Ombudsman to notify authority

14. (1) If the Ombudsman investigates a matter, he shall notify the authority affected and any other person he considers appropriate to notify in the circumstances.

(2) The Ombudsman may at any time during or after an investigation consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) Where before the Ombudsman has made his decision respecting a matter being investigated he receives a request for consultation from the authority, he shall consult with the authority.

1977-58-11.

Power to obtain information

15. (1) The Ombudsman may receive and obtain information from the persons and in the manner he considers appropriate, and in his discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, converse in private with any person there and otherwise investigate matters within his jurisdiction;

(b) require a person to furnish information or produce a document or thing in his possession or control that relates to an investigation at a time and place he specifies, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before him and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; and

(e) receive and accept, on oath or otherwise, evidence he considers appropriate, whether or not it would be admissible in a court.

(3) Where the Ombudsman obtains a document or thing under subsection (2) and the authority requests its return, the Ombudsman shall within 48 hours after receiving the request return it to the authority, but he may again require its production in accordance with this section.

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;

(b) result in or involve the disclosure of deliberations of the Executive Council; or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest,

the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14.

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15.

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16.

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17.

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that

the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

22. (1) Where, after completing an investigation, the Ombudsman believes that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law;

(ii) unjust, oppressive or improperly discriminatory;

(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;

(iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;

(v) related to the application of arbitrary, unreasonable or unfair procedures; or

(vi) otherwise wrong;

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose;

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or

(iii) was negligent or acted improperly; or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

(a) a matter be referred to the appropriate authority for further consideration;

(b) an act be remedied;

(c) an omission or delay be rectified;

(d) a decision or recommendation be cancelled or varied;

(e) reasons be given;

(f) a practice, procedure or course of conduct be altered;

(g) an enactment or other rule of law be reconsidered; or

(h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.

1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.

1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.

1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;

(b) to make a report under this Act; and

(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or

(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force by regulation of the Lieutenant Governor in Council.

1977-58-34; 1983-10-25, effective October 26, 1983 (B.C. Reg. 393/83).

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Public schools, colleges and boards of school trustees as defined in the *School Act* and college councils established under that Act.

8. Universities as defined in the *University Act*.

9. Institutions as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch.; *[bracketed sections 3 to 11 to be proclaimed]*; 1983-3-34, effective December 22, 1983 (B.C. Reg. 486/83); 1987-48-14.